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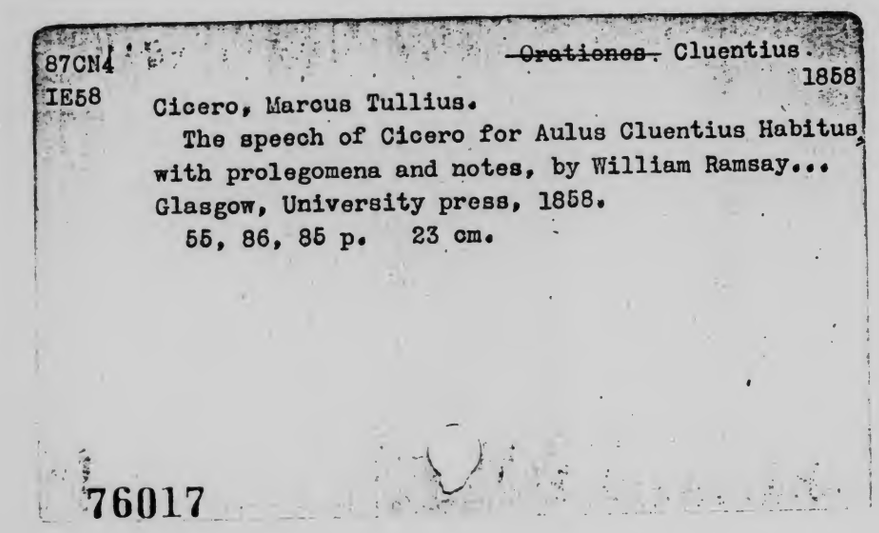

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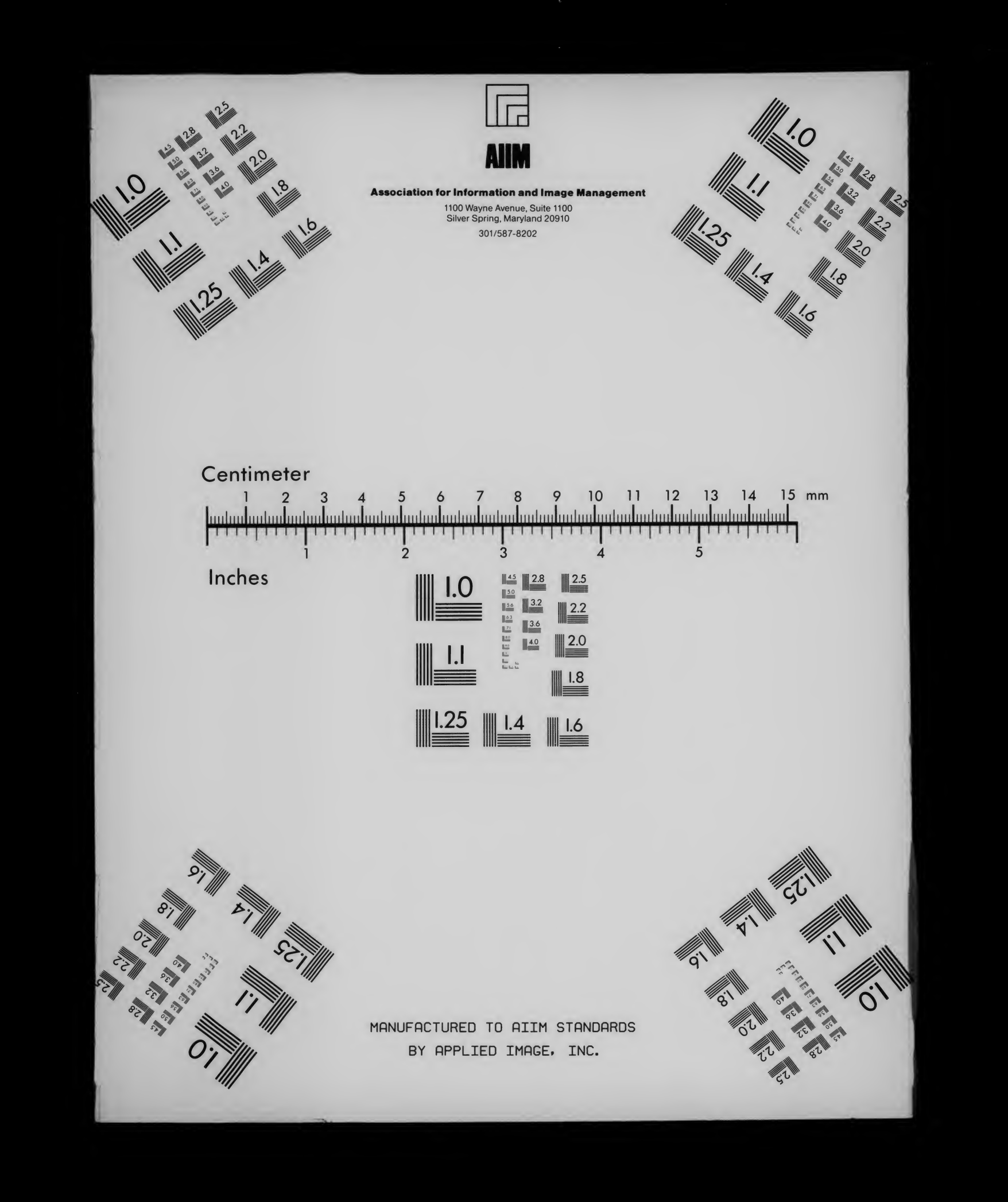
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THE

SPEECH OF CICERO

FOR

AULUS CLUENTIUS HABITUS.

WITH

PROLEGOMENA AND NOTES.

By WILLIAM RAMSAY, M.A. Trin. Coll. Camb.,
PROFESSOR OF HUMANITY IN THE UNIVERSITY OF GLASGOW.

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PREFACE.

SEVERAL years ago I read the following passage in Niebuhr's well known "Letter to a young man who wished to devote himself to Philology."

"For the study of language, I recommend you, above all, Demosthenes and Cicero. Take the speech of the former *for the Crown*, that of the latter *pro Cluentio*, and read them with all the attention you are master of. Then go through them, giving account to yourself of every word, of every phrase. Draw up an argument: try to get a clear view of all the historical circumstances, and to arrange them in order. This will give you endless work; and hence you will learn how little you can, and consequently do yet know. Then go to your teacher,—not to surprise him with some unexpectedly difficult questions (for in the speech for Cluentius there are difficulties with regard to the facts which, even after the longest familiarity with it, can only be solved by conjectures, such as will not occur to the best scholar at the moment) but that he may have the kindness to consider the passages, and to consult the commentators for you, where your powers and means are at fault. Construct a sketch of the procedure in the accusation against Cluentius. Make a list of the expressions, especially epithets and the nouns they are applied to, and mark the key of the metaphors. Translate passages; and a few weeks after, turn your translation back into the original tongue."[1]

I was induced by these remarks to pay more particular attention than I had previously given to the speech for Cluentius, and soon became convinced that no one of the Orations of Cicero was more deserving of

[1] This translation is, I believe, from the pen of that most accomplished scholar and most amiable man, the late lamented Archdeacon Hare.

careful study, and that, although not included in the ordinary selections formed for the use of young scholars, it was, perhaps, beyond any other, calculated to awaken their interest and to invite them onwards.

It certainly possesses claims both external and internal of the highest order.

Like that for the Manilian Rogation, it was composed and delivered when Cicero was in the very prime of life and intellectual vigour, before his mind had been harassed, his temper soured, his courage shaken and his energies impaired by the anxieties, disappointments, dangers and misfortunes which beset his declining years. He had, at the time, the strongest motives for exertion. His success in public life had been uninterrupted, but the great prize was not yet won. He had mounted high on the path of political distinction, but the topmost pinnacle yet rose steep before him, and this he could not hope to reach, except by maintaining and increasing that reputation as an orator to which alone he owed the favour of his countrymen and his previous triumphs.

On examining the oration itself it will be found full of freshness and vigour, remarkable alike for clearness and precision of statement in a case singularly complicated, for force and acuteness of argument, and for magnificent bursts of eloquence. Besides all this it possesses an attraction peculiarly its own, for while elsewhere we are presented with pictures of life and manners in Rome and in Rome only, we here obtain a glimpse of the social habits and relations of those who dwelt in the provincial towns of Italy.

These considerations induced me to follow out, for my own amusement and improvement, the recommendation of Niebuhr; the work gradually grew under my hands until it assumed a form which I did not originally contemplate, and, after many years of experience in the communication of knowledge, I have been induced to hope that my labours, presented in a modified shape, may prove useful to others as well as to myself.

The most important editions of this speech, in so far as the text is concerned, are those of Orelli (Zurich 1826), which presents what may be termed the Vulgate Recension under its most correct form, and that of Classen (Bonn 1831), who introduced many changes on the faith of two MSS., described more particularly in the Prolegomena. The text of the present edition is the result of a careful comparison of the two above named.[1] In some cases I have adopted the changes introduced by Classen, and in many others I have preferred the common reading. The notes appended to the edition of Classen are, for the most part, purely critical, explaining and defending his alterations of the Vulgate, and are so remarkable for acuteness and good scholarship that it is not without great diffidence, and the fear that I am exposing myself to a charge of presumption that I have ventured to differ from him on several points of considerable importance.[2] It appears to me that, although the two MSS. which he chiefly followed are unquestionably of great value, he has formed a somewhat exaggerated estimate of their paramount importance, and having resolved to adhere to them wherever it was practicable, he became, as it were, an ex parte advocate, his ingenuity enabling him to urge most plausible reasons for change in many cases where the change was the reverse of an improvement. His arguments, when read for the first time, are so dazzling that we are inclined to follow blindly wherever he leads,

[1] I have spoken more fully of the different editions of this speech in the Prolegomena.

[2] I would refer particularly to the following passages in the Commentary, most of which relate to proposed changes in the text, but a few to explanations also of sentences in which there is no difference of opinion as to the reading.

I. § 3. ... *sine vestro ac sine talium.*
I. § 4. ... *regem illam rem.*—II. § 6. ... *taciti cogitationi.*
IV. § 10. ... *pro incolumi et vivo.*—V. § 11. ... *Sulla.*
VI. § 16. ... *quam ut illa matre.*—VI. § 17. ... *atque in ipsa.*
VI. § 18. ... *conflatum et perfectum.*—VI. § 18. ... *sed ea vero.*
VIII. § 23. ... *A. Aurius, vir fortis.*—XVI. § 47. ... *Servus*, &c.
XVI. § 47. *Ne multis.*—XIX. § 51. ... *quod timide dicam.*
XXI. § 57. ... *patronus adhibetur.*—XXVI. § 72. ... *ut blandissime.*
XXXIV. § 92. ... *aut si in legem.*—XXXVI. § 100. ... *quae mihi est.*
XXXVI. § 102. *Quamobrem.*—XXXIX. § 109. ... *quanta ignoratio.*
XLV. § 126. ... *aerarium reliquissent.*
XLVI. § 128. *Quare, ne in bello.*—LIV. § 149. *Quis ergo.*
LIV. § 149. ... *se ne ipsa.*—LIV. § 149. ... *quae a me desiderari.*
LX. § 165. ... *C. Vibium Capacem.*—LX. § 165. *At heres est.*
LXI. § 170. ... *nemo adire.*—LXIII. § 176. ... *auctoritate advocatorum*, &c., &c.

but on a second perusal, when the brilliancy is somewhat dispelled, doubts arise as to the path we are pursuing and eventually we arrive at the conclusion that we have not seldom been led astray. Thus a circumstance has arisen which I am bound to explain in order that I may not incur the the blame of carelessness and inconsistency. Some of the readings which I have admitted into the text I have impugned in the commentary. The text was printed two years ago, but a severe and protracted illness prevented me from sending the notes, although completed, to the press until this summer. The additional time thus afforded for consideration has led me to reject some views which I had previously adopted.[1]

One word with regard to the commentary itself.

I have endeavoured to the best of my ability to explain everything which might fairly cause embarrassment to a young scholar, but at the same time I have not felt called upon to enter into any lengthened details upon those points of History and Antiquities of which a knowledge may be readily obtained from the Dictionaries and Manuals, which are or ought to be in the hands of every one. It is intended for the use of my students, and I have striven to adapt it especially to their wants. I shall be very proud if it should prove serviceable to more advanced scholars, but my principal object has been to consult the interests of those whom I am chiefly bound to serve.

[1] For example,
I. § 3. ... *in hac difficultate.*—IV. § 10. ... *hic autem.*
V. § 12. ... *in omni causa.*—VI. § 15. ... *nonne timuisti.*
VI. § 16. ... *nam quae.*—IX. § 28. ... *spe optime.*
X. § 29. ... *de eo quem omnes.*—X. § 30. ... *emori.*
XII. § 34. ... *ut illum Magium.*—XVI. § 47. ... *qua diligentia.*
XXVI. § 72. ... *nationis magis suae*, &c., &c.

THE COLLEGE,
Glasgow, 31st October, 1857.

PROLEGOMENA.

In what follows, the large Roman numerals refer to the Chapters of the Speech.

§ 1.

Date of the Speech and names of the persons immediately connected with the Trial.

This speech was delivered B. C. 66, in the consulship of M. Aemilius Lepidus and L. Volcatius Tullus, Cicero being Praetor,[1] before Q. Voconius Naso,[2] who this year acted as an assistant criminal judge (*iudex quaestionis*), presiding in the court where persons accused of poisoning were tried under the *Lex Cornelia* (*Quaestionem de veneficiis exercebat*).

The defendant was Aulus Cluentius Habitus, a member of the Equestrian Order,[3] a native and inhabitant of Larinum, a municipium of the Frentani, on the confines of Apulia, eighteen miles from Teanum Apulum.[4] Cluentius was accused by a young man named Oppianicus, stepson and son-in-law of the mother of Cluentius, of having administered poison, or having been the cause that poison was administered[5] to three different persons.

1. To a certain C. Vibius Capax, who had died in consequence.
2. To Oppianicus, the father of the accuser, who also had died in consequence.
3. To a young man named Balbutius, who had died in consequence of accidentally swallowing a cup of poisoned wine intended for his friend, the younger Oppianicus.[6]

The prosecution was conducted by Titus Attius Pisaurensis, of whose abilities Cicero speaks favourably in another place,[7] and the defence by Cicero, singlehanded, as he expressly declares—*totam hanc causam, vetere instituto, solus peroravi.*[8]

[1] LIII. [2] XXXIII—LIII. LIV. [3] LVII. [4] IX. [5] I. [6] LX. LXI. [7] Brut. LXXVIII. [8] LXX.

§ 2.

Previous History of the Case.[1]

In the year B. C. 74, during the consulship of L. Licinius Lucullus and M. Aurelius Cotta,[2] C. Verres being Praetor Urbanus,[3] a certain Aulus Cluentius Habitus, a native of Larinum (the defendant namely in the present suit), accused his own stepfather, Statius Albius Oppianicus, of an attempt to poison him. The cause fell to be heard before C. Iunius, a person who had held the office of aedile, and who that year acted as an assistant criminal judge, presiding in the court where cases of poisoning were tried.[4]

At the period in question, the jurors in criminal trials were selected from the senators exclusively, and great public indignation had been excited by the partiality and venality displayed by them on many occasions.

The characters of Cluentius and Oppianicus, both strangers from a small municipal town, were little known at Rome except to a few private friends, but shortly before the trial a report gained general credit that an attempt had been made to bribe the jurors, and that several had actually been bought over. At the trial, after the speeches and evidence on both sides had been heard, the votes of the jurors were given, not by ballot, but openly, at the desire of the accused, who availed himself of the option granted by a law at that time in force.[5] Those to whom it fell by lot to vote first were men of notoriously bad character, and all of these gave a verdict of *guilty*, some of the more respectable and conscientious, feeling convinced that there was foul play somewhere, declined voting (*non liquere dixerunt*), five gave a verdict of *not guilty*, but when the votes were summed up, the accused was condemned by a majority of two.[6] In

[1] This, it ought to be observed, is derived almost entirely from the statements of Cicero himself in the speech before us, which must, of course, be received with a certain amount of caution. But however much Cicero might endeavour to give a colour to some facts, and to slur over others, we can scarcely believe that he would have ventured to narrate what was positively false, when so many of his hearers could have at once detected and denounced a pure fabrication.

[2] XLIX. [3] XXXIII. [4] XX. XXVII. XXXIII. [5] XX—XXVII.

[6] The facts with regard to this decision are generally misrepresented by commentators. Thus in the "Argumentum" prefixed to the edition of Lemaire, it is stated that five gave the verdict *guilty*, and five said *non liquet*, in which case Oppianicus must have been acquitted: and in the "Inhalt" of Klotz, which is very long and elaborate, we are told that, that out of thirty-two jurors, all, with the exception of five, pronounced Oppianicus guilty. But from the Oration for Caecina (X) we learn that the result turned upon a single vote. In stigmatizing the conduct of Falcula, the orator says

In eum quid dicam, nisi id quod negare non possit? venisse in consilium publicae quaestionis quum eius consilii iudex non esset: et in eo consilio, quum causam non audisset, et potestas esset ampliandi, dixisse *sibi liquere:* quum incognita re iudicare voluisset, maluisse condemnare quam absolvere: quum si uno minus damnarent, condemnari reus non posset, non ad cognoscendam causam sed ad explendam damnationem praesto fuisse.

Seventeen brought in a verdict of guilty, and that being a majority, Oppianicus was condemned; but if Falcula had said *non liquet*, then sixteen only would have said *guilty*, and sixteen not being a majority, Oppianicus would not have been condemned. The exact state of the vote is given below, p. 17.

[1] XXIV. XXVIII. [2] XX. [3] XXXIII. [4] XXXIII. Pro Caecin. X.

addition to the suspicions previously entertained, it soon transpired that a large sum of money had been placed in the hands of C. Aelius Staienus, one of the jurors, a senator of evil repute and well known to be desperately embarrassed in his circumstances. It was ascertained that Staienus had received this money for the purpose of distributing it among the jurors, and had been obliged to refund it in consequence of detection.[1] According to one report, indeed, the money had been received from Oppianicus, but Staienus having been one of the first to vote for his condemnation, this account appeared so manifestly improbable that no credit was attached to it, and no faith was reposed in a story trumped up by Staienus that the money had been lodged in his hands to effect a compromise, but it was almost universally believed that Cluentius was the suborner who had corrupted the jury for the purpose of securing the conviction of an innocent man with whom he had a family quarrel.

Nor was this all, it was discovered that C. Iunius, the Iudex Quaestionis, who was known to be the intimate friend of Cluentius,[2] had neglected to take the oath of office,[3] and had been guilty of an irregularity in filling up the vacancies in the jury caused by challenge or other causes:[4] and that one senator at least, thus illegally introduced into the *consilium*, had voted against Oppianicus although he had heard a part only of the evidence.

Public feeling was now roused and was manifested in all practicable forms, and every pretext was seized for inflicting punishment upon those who had participated in such a villanous transaction.

The matter was first taken up by P. Quintius, one of the Plebeian Tribunes, who made it the theme of several vehement harangues, which had the effect of violently inflaming the populace. He also

impeached Iunius on account of the omissions and irregularities of which he had been guilty, and the indignation excited was so strong that he was scarcely permitted to say a word in his defence, but was at once convicted almost by acclamation. The penalty was nominally a fine only, yet his character was so much blasted by the share that he was supposed to have taken in this business, that although he had previously raised himself by his own exertions to the office of aedile, and was considered certain of the praetorship, he was now obliged to withdraw from public life.[1]

The senate at the same time passed a strong resolution on the necessity of enacting some law, which should render the penalties more stringent against all who should be proved to have conspired to procure the conviction of the guiltless.[2]

A number of the jurors were brought to trial upon old charges raked up against them, and five were punished under different laws, it being well understood that their condemnation was caused solely by the prepossession which excited against them in the mind of the community.[3]

One only, C. Fidiculanius Falcula, was impeached directly for his conduct on the trial, but although accused twice, he was acquitted.[4]

Nor was this all, four years afterwards, the Censors, Cn. Cornelius Lentulus and Lucius Gellius (B. C. 70), affixed a note of their displeasure to the names of three of the jurors and to that of Cluentius himself, assigning as their reason for inflicting this disgrace the conduct of these persons with regard to Oppianicus.[5]

The feeling extended even into the relations of private life, for a certain Cn. Egnatius disinherited his son in consequence, as he alleged, of his having received a bribe on this occasion.

After all direct manifestations of public opinion had ceased, the infamy of the *Iudicium Iunianum*, or *Albianum Iudicium* as it is sometimes termed, passed into a proverb denoting the worst form of judicial corruption.

[1] XXIX. XXX. XXXIII. XXXIV. XXXV.
It does not appear from the words of Cicero, as we should be led to suppose from the summary of Klotz, that Iunius was at this time a candidate for the praetorship, and that he lost his election in consequence of his conduct on the trial of Oppianicus. We are merely told that he had been aedile, and that he was regarded as certain of rising to the office of Praetor (some day or other). Curiously enough, in the face of this passage, in Lemaire's introduction to this speech, Iunius is spoken of as actually Praetor.

[2] XLIX. [3] XXXV. XXXVI. XLI. [4] XXXVII. [5] XLV. XLVII. XLVIII.

Eight years had now elapsed since the condemnation of Oppianicus, yet the circumstances of the case were by no means forgotten. The odium against Cluentius seems to have been revived by the present impeachment, and advantage of this prejudice was taken by the advocate for the prosecution. Cicero was fully alive to the difficulty of his position, and at the commencement of the oration we find such phrases as the following repeated again and again—*Invidia iam inveterata iudicii Iuniani—Negem fuisse illam infamiam iudicii corrupti? negem illam rem agitatam in concionibus? iactatam in iudiciis? commemoratam in senatu? evellam ex animis hominum tantam opinionem? tam penitus insitam? tam vetustam?—Ego me, iudices, ad eam causam accedere, quae iam per annos octo continuos ex contraria parte audiatur, atque ipsa opinione hominum tacita prope convicta atque damnata sit, facile intelligo.*

This being understood, we are able readily to understand

§ 3.

The general Plan of the Defence.

Cicero commences by pointing out to the jurors that the speech of the accuser had been divided into two heads,

I. The first topic, and that on which he chiefly insisted, was the conduct of Cluentius at the trial of Oppianicus. It is clear that Attius had refreshed the memory of his auditors upon all the facts as currently believed, and it is also clear that it was upon the impression produced by these that he mainly relied for obtaining a conviction. This is what Cicero terms the *Invidia*, the odium and prejudice existing against Cluentius.

II. The second part of the accuser's speech referred to the charges of poisoning upon which Cluentius was more immediately brought to trial, the three alleged acts detailed above in § 1.—This is what Cicero terms the *Crimen* or direct charge against Cluentius.

In order to deal systematically with his opponent, Cicero also divides his reply into two great heads.

I. He declares that he will first seek to remove the *Invidia* against his client, and for that purpose he endeavours to shew—

(1.) That no one had ever been accused of more atrocious crimes, or convicted on more conclusive evidence than Oppianicus.

(2.) That the very jurors who condemned him, had in reality pronounced him guilty beforehand by their verdicts in two previous trials immediately connected with his crime—trials, the fairness

of which had never been impugned; that consequently, they could not, without exposing themselves to the charge of the grossest inconsistency, have avoided pronouncing his condemnation (XXII), and that the only marvel was that Oppianicus had ventured to stand a trial at all.

(3.) That, although there had been undoubtedly an attempt made to corrupt the jury, Oppianicus and not Cluentius was the corruptor. This he proceeds to demonstrate both by argument and evidence. He dares his opponent to deny that money had been given by Oppianicus, he defies him to prove that the same fact could be established with regard to Cluentius, and endeavours, by *a priori* reasonings to shew that such a supposition was in the highest degree improbable.

(4.) He discusses, in succession, the various demonstrations of public feeling, maintaining—that in some cases they had proceeded from the unreasonable and unjustifiable means resorted to for inflaming the passions of the multitude—that many of the instances adduced by Attius had been unfairly stated, or unfairly interpreted, or invested with more importance than they deserved—that Iunius especially had been borne down by popular clamour without being permitted to say even a word in his own defence—and, finally, that no one had been impeached directly for his conduct as a juror on the trial of Oppianicus, with the exception of a single individual who had been acquitted twice over.

(5.) He demonstrates that Cluentius, not being a senator, was not amenable to that chapter of the Cornelian Law on poisoning which treated of conspiracy, but at the same time calls attention to the fact that his client positively refused to shelter himself under the protection thus afforded him, and which he had an undoubted right to claim.

(6.) He dismisses lightly some acts of fraud and violence with which Cluentius had been charged, for the purpose, as he insinuates, of heightening the odium already existing against him.

II. The remainder of the speech (LX—LXXI) is occupied with exposing the baselessness of the three charges of poisoning under which, ostensibly, Cluentius was brought to trial, and in developing the incredible profligacy and unnatural guilt of Sassia, the mother of Cluentius, by whose machinations this plot against her son had been contrived.

In order to render the frightful tale of the complicated villanies of Oppianicus, which form the first topic in the defence, more intelligible, we subjoin a list of what may fairly be called

§ 4.

The Dramatis Personae

of this horrid domestic Tragedy.

A. Statius Albius Oppianicus, the villain of the tale, a member of the Equestrian Order, a native and inhabitant of Larinum, a man who at one time occupied a high position in his Municipium. By one of his wives, named Magia, he had a son, viz.,

B. Oppianicus the younger, the accuser of Cluentius in the present trial. He married the daughter, by a former marriage, of his step-mother Sassia.

Whenever the name *Oppianicus* occurs in the following narrative, the elder Oppianicus (A) is meant, unless the contrary is specially indicated. The elder Oppianicus was now dead.

C. C. Oppianicus, brother of Statius Albius, and poisoned by him (X).

D. Aulus Cluentius Habitus, father of the defendant, a native of Larinum, a man of station and character in his own town and in all the surrounding district. He married Sassia (see below, H.) and died in the consulship of L. Cornelius Sulla and Q. Pompeius Rufus, B. C. 88 (V), leaving two children, viz.,

E. Aulus Cluentius Habitus, the defendant in the present trial. He was fifteen years old at the time of his father's death, twenty-nine at the trial of Oppianicus, and thirty-seven when the oration before us was delivered.

Whenever the name *Cluentius* occurs in the following narrative, the younger Cluentius is meant, unless the contrary is specially indicated.

F. And a daughter (Cluentia) not mentioned by name in this speech. She was grown up and marriageable at the period of her father's death, and soon after wedded A. Aurius Melinus (see below, O), her first cousin (*nupsit consobrino suo*), the son of her mother's sister. This union was soon terminated by a sudden divorce (V).

G. Cluentia, sister of the elder Cluentius (D), and therefore aunt of the defendant. She married Oppianicus, and was poisoned by him (X).

H. Sassia, wife of the elder Cluentius (D), mother of the younger Cluentius (E) and of Cluentia (F). After the marriage of her daughter she fell in love with her son-in-law and nephew, A. Aurius Melinus, a divorce from Cluentia (F) followed, and then Sassia married him

herself and bore him a daughter (V). A. Aurius Melinus having been proscribed and put to death through the instrumentality of Oppianicus, in the Sullan troubles, she married Oppianicus (VIII). The daughter whom she bore to her nephew—son-in-law——husband Melinus, she married to young Oppianicus (B), her stepson (LXIV). The first cause of enmity between Sassia and her son Cluentius, was her conduct to his sister, her own daughter, in the matter of A. Aurius Melinus. From that time forward she regarded her son Cluentius with settled hatred, and all his subsequent troubles, misfortunes and dangers in life are ascribed by Cicero to her profligate schemes and untiring malignity (VI. LXI. LXIII. LXIV. LXVI. to the end). We find a powerful summary of her crimes in Chapters LXVI. LXX. In the latter she is designated as *Uxor generi, noverca filii, filiae pellex.*

I. DINAEA, a lady of Larinum. We gather from the context that she had been twice married and had borne two children by each marriage, two sons AURII (see below K. L.), a son MAGIUS (M.) and a daughter MAGIA (N.), one of the wives of the elder Oppianicus. She survived three of these (L. M. N.), and soon after receiving intelligence that her remaining child (K.) long supposed dead, was still alive, she died. Cicero when he first mentions this event says simply "oppressa est morbo," but afterwards asserts that she was poisoned by Oppianicus. By her will she made her grandson, young Oppianicus, her heir, and bequeathed a legacy of 400,000 sesterces, to her surviving son (VII. XIV).

K. M. AURIUS, son of Dinaea (I), taken prisoner in the Social War at Asculum, sold into slavery and long supposed to be dead. As soon as intelligence had been received by his friends that he was still alive, before they were able to discover and ransom him, he was made away with by the treachery of Oppianicus, who was his half brother-in-law. Hence he is called the *avunculus* of the younger Oppianicus, who was the son of his half-sister Magia (N). (VII. XLIV.)

L. NUMERIUS AURIUS, son of Dinaea (I). He died first of her family, making his half-brother Num. Magius (M.) his heir. (VII.)

M. NUM. MAGIUS, son of Dinaea (I). He died third of the family, and being ignorant that his half-brother M. Aurius (K.) was still alive, he made his nephew, young Oppianicus, son of his sister Magia, his heir, directing him to divide the inheritance with Dinaea (I). Magius died after Oppianicus had commenced his career of crime, and therefore took precautions to prevent foul play, but these proved unavailing. (VII. XI. XII.)

N. MAGIA, daughter of Dinaea (I), married the elder Oppianicus, and hence Dinaea is termed *socrus Oppianici.* Magia died second of the family of Dinaea, leaving a son, the younger Oppianicus, the accuser of Cluentius. (VII.)

O. A. AURIUS MELINUS, nephew to Sassia (II), being her sister's son. He married his first cousin Cluentia (F), divorced her, and then married his aunt and mother-in-law Sassia. He was put to death by Oppianicus as one of those proscribed by Sulla. (V. VIII. IX.)

P. C. AURIUS, son of A. Aurius Melinus (O), put to death at the same time with his father. (VIII.)

Q. A. AURIUS, a kinsman of the Aurii, the children of Dinaea (I, K, L), characterised by Cicero as "vir fortis et experiens et domi nobilis." Intelligence having been received that Oppianicus was meditating foul play against his newly discovered brother-in-law M. Aurius (K), this A. Aurius gave public notice, in the presence of Oppianicus, that, if any evil should befal M. Aurius, he would impeach Oppianicus. When the news arrived that M. Aurius was actually dead, A. Aurius prepared to execute his threat, upon which Oppianicus fled from Larinum and took refuge in the Camp of Q. Metellus. After the arms of Sulla had triumphed, Oppianicus returned to Larinum, deposed the four magistrates elected by the Municipes, and himself assumed the chief civic authority along with three others. He then put to death the three Aurii (O, P, Q), together with a former tool of his own villany, a certain Sextus Vibius, declaring that they had all been proscribed by Sulla.

We must carefully distinguish this A. Aurius (Q) from A. Aurius Melinus (O). That they are totally different persons we shall endeavour to demonstrate in a note on Chap. XVI. (VIII. IX. XIV. XVI.)

R. AURIA, the wife of C. Oppianicus (C), the brother of Statius Albius Oppianicus. She was poisoned by the latter while pregnant. (XI.)

S. AURIA (not named), daughter of A. Aurius Melinus (O) and Sassia. She was married to young Oppianicus. (LXVII.)

§ 5.

The Crimes of Oppianicus.

We now return to Statius Albius Oppianicus (A) for the purpose of giving a history of his career as detailed by Cicero. A rapid

summary, embracing most of the following particulars, will be found in Chapter XLIV.

1. He poisoned his wife Cluentia (G), sister of the elder Cluentius, and therefore paternal aunt (*amita*) of the defendant. This is the first in order of his enumerated crimes. (X.)

2. He poisoned Auria (N), wife of his brother C. Oppianicus (C), she being, at the time, pregnant. (XI.)

3. He poisoned his brother C. Oppianicus (C), and by the triple murder secured his inheritance. (XI.)

4. On the death of his brother-in-law Numerius Magius (M), he induced the widow to procure abortion in order that he might evade the will of Magius and secure the whole inheritance, of which he fraudulently gained possession. He then married the woman five months after her husband's death, but the union lasted for but a brief period. (XII.)

5. He poisoned, through the instrumentality of an itinerating quack (*pharmacopola circumforaneus*), his mother-in-law Dinaea (I), the grandmother of young Oppianicus (B), who had made the boy her heir. After her death, he obtained possession of the will, made many erasures, and then, fearing detection, transcribed it on new tablets and attached forged attestations. (VII. XIV).

6. He contrived the murder of M. Aurius (K), son of Dinaea, his own brother-in-law, at the very time when he was about to be restored to his friends, after having long pined in slavery and been accounted dead. The object here was to secure to his son, young Oppianicus, and therefore virtually to himself, the lad being very young, the whole inheritance of Dinaea. (VIII.)

7. Being threatened with impeachment by A. Aurius (Q), a kinsman of the deceased, he fled from Larinum, joined the party of Sulla, and taking advantage of the proscriptions, put to death A. Aurius (Q), A. Aurius Melinus (O), Caius Aurius (P) son of the latter, and a certain Sext. Vibius who had been privy to the murder of M. Aurius (K). (VIII. IX.)

8. He now sought to marry Sassia (H) the wealthy widow of A. Aurius Melinus (O). She objected because he was burdened with three sons. One of these boys by a (divorced) wife named Papia, was living with his mother at Teanum Apulum, 18 miles from Larinum. Another son, still an infant, had been borne him by wife named Novia, who must have been divorced or dead.[1]

[1] Probably dead, for while much is said of the grief of Papia, no notice is taken of Novia.

Both of these children he murdered within ten days of each other, and having thus removed the scruples of Sassia married her. The third son spoken of must have been young Oppianicus (B).[1] By this union Oppianicus became the step-father (*vitricus*) of Cluentius (E).[2] (XIV.)

9. Asinius, a wealthy and weak young man of Larinum, was decoyed to Rome, at the suggestion of Oppianicus, through the agency of a certain pander named Avillius. After some time had been spent in dissipation in the capital, a forged will was cunningly fabricated and Asinius was then murdered by Avillius. Avillius was arrested on suspicion, and having been brought before Q. Manilius, one of the Triumviri Capitales, confessed at once that he had made away with Asinius at the instigation of Oppianicus. Oppianicus was then taken into custody, but contrived, by bribing Manilius, to have the matter hushed up. The whole of these facts, says Cicero, were proved by unimpeachable evidence, at the trial of Oppianicus before Iunius. (XIII.)

10. The whole body of the Decuriones, or Town Council, of Larinum, pronounced him guilty of falsifying the public registers (*tabulas publicas censorias*). (XIV.)

He now became an object of general suspicion, he was shunned by all, and no one would willingly hold intercourse or enter into any transaction with him. Revenge against his fellow townsmen was the motive which urged him to take a step which ultimately led to his ruin.

11. The affair to be detailed first produced a direct collision between Oppianicus and Cluentius, and compelled the latter in self defence, according to the representation of Cicero, in order to save his own life (XIV. VII.) to become the accuser of one who was at once his uncle-by-marriage and his step-father.

[1] We find in some of the "Arguments" prefixed to this speech, that in the edition of Lemaire for example, that Oppianicus killed his three sons. Cicero says that Sassia objected to marry him because he had three sons, but the murder of two of them seems to have sufficed to remove her scruples.

[2] On the trial of Scamander, Canutius used the expression (XIX)—*Oppianici hominis in uxoribus necandis exercitati.* We hear of six wives in this speech who succeeded each other, probably in the following order.

1. Magia (N) daughter of Dinaea (I). Magia died and left a son, the younger Oppianicus (B). VII.
2. Cluentia (G) sister of the elder Cluentius (D). X.
3. The widow of his brother-in-law Numerius Magius (M). X. XI. XII.
4. Papia, from whom he was divorced. IX.
5. Novia, whose child was still an infant when put to death along with the son of Papia.
6. Sassia.

There was a considerable number of public slaves at Larinum consecrated to the service of Mars and hence called *Martiales*, who seem to have been upon much the same footing as the *Venerei* in Sicily attached to the temple of Venus Erycina. Oppianicus, thought fit, suddenly, to assert that these Martiales were all free men and Roman citizens. The decuriones and the townsmen in general indignantly resisted this claim and Cluentius, on account of the antiquity of his family, his social position, and high personal character, was requested to plead their cause at Rome. Yielding to their solicitations, he undertook the task, and vehement contests ensued between him and Oppianicus,[1] who being "immani acerbaque natura" was still further stimulated by the hatred which his wife Sassia bore to her son, and by the knowledge that Cluentius had as yet made no will. If he died intestate his whole property would, according to Roman law, have been inherited by Sassia, and thus have fallen into the hands of Oppianicus. Hence it was resolved that Cluentius should be poisoned. Oppianicus had long been in habits of intimacy with two worthless, depraved natives of Aletrium, Caius and Lucius Fabricius, of whom the latter was now dead. With the survivor Caius, Oppianicus consulted upon the best means of accomplishing his purpose.[2] Cluentius was at this time in bad health and was under the care of a physician named Cleophantus. Fabricius began to tamper with Diogenes the slave of Cleophantus, and to offer him a reward if he would administer poison to his master's patient Cluentius. The slave feigned compliance, but disclosed the proposal to his master, who in turn communicated the plot to Cluentius, and he took the advice of an

[1] Klotz in his Introduction to the speech does not give a correct view of this matter. He speaks as if Cluentius, at the instigation of the Decuriones of Larinum, had brought a formal impeachment against Oppianicus for his conduct, and that Oppianicus, in order to get rid of the prosecution, had sought to compass the death of Cluentius. But the case was simply this—Oppianicus asserted that certain persons, reputed to be slaves, were entitled to be regarded as free men and Roman citizens, the authorities and citizens of Larinum, on the other hand, maintained that they were really slaves and that the claim was unfounded. The suit, involving a question of Ius Civitatis, was carried to Rome, where Cluentius and Oppianicus came into frequent and angry collision as supporters of rival interests.

[2] If we are to understand the expressions of Klotz with regard to Fabricius—Oppianicus setze sich also mit einem bekannten Meuchler L. Fabricius in Verbindung—to mean that Fabricius was a well known assassin or bravo, they are much too strong, for Cicero describes the character of the brothers Fabricii, previous to the attempt of Caius on Cluentius, in general terms only, as notoriously bad—*vitiis atque improbitate omnibus noti*—but perhaps the word *Meuchler* does not necessarily mean a murderer.

intimate friend, M. Baebius a senator of high character. By the advice of Baebius, Cluentius purchased Diogenes from Cleophantus in order that he might be more at his disposal should his evidence be required. A few days afterwards, in the presence of witnesses placed in concealment for the purpose, the poison, and a sum of money, sealed up as the reward of Diogenes, were seized in the hands of Scamander a freedman of Fabricius. (XV. XVI.)

Cluentius now impeached Scamander; the prosecution was conducted by P. Canutius; the defence was undertaken by Cicero at the earnest request of some friends, respectable inhabitants of Aletrium; Caius Iunius, assistant judge, (*iudex quaestionis*) presided at the trial. The whole circumstances of the case were fully laid open implicating both Fabricius and Oppianicus and the facts were established by unquestionable evidence. The votes of the jurors were given by ballot, and Scamander was found guilty, with only one dissentient ticket, which was claimed by C. Aelius Staienus, a senator of doubtful reputation. (XVII—XX. XXIV.)

This verdict, says Cicero, was given nominally against Scamander, in reality against Oppianicus. Cluentius, however, did not yet attack his step-father, but next impeached C. Fabricius, whose trial, in consequence of its close connection with the preceding case, was allowed to come on immediately. Canutius again conducted the prosecution, the jurors were the same, and Iunius was again the judge, but neither Cicero nor the townsmen of Aletrium came forward to support the accused. Fabricius without waiting for the close of the trial, slunk out of court and was found guilty unanimously. (XXI. XXIV. XXXVIII.)

Last of all, Cluentius proceeded to impeach Oppianicus, whose guilt had, in reality, been fully demonstrated in the trials of his associates. Iunius was again presiding judge and the jurors were, apparently, with one or two exceptions, the same who had previously convicted Scamander and Fabricius—*Apud eosdem iudices reus est factus, cum is duobus praeiudiciis iam damnatus esset.* In addition to the crime with which he was specially charged, all the enormities of his former life were detailed at length with great force by Canutius, who proved his statements by calling many witnesses. (XXII. X.)

Oppianicus who had discerned the danger while still far off had applied to Staienus when Scamander was tried and had succeeded in gaining his vote (XX. XXI. XXIV). He now, in great alarm, again had recourse to him in order that he might ascertain

if it were possible to bribe a sufficient number of the jury to insure his acquittal. After hard bargaining Staienus undertook to buy over sixteen out the thirty two, at 40,000 sesterces a-head, it being understood that he himself was to have something more for his trouble and for his own vote which would make the seventeenth. Accordingly Oppianicus lodged the sum required, 640,000 sesterces, in the hands of Staienus, who, being in extreme poverty, and encouraged by the success which had attended a former attempt, now began to speculate whether he could, by any means, appropriate the whole sum. The most obvious method of accomplishing this purpose appeared to be to secure the condemnation of Oppianicus, thinking that if he were convicted he would not venture to demand restitution. In pursuance of this scheme, Staienus employed two of his fellow jurors, Bulbus and Gutta, men as corrupt as himself, to gain over as many of the *Consilium* as were accessible to bribes (*nummarii*). This task they joyfully undertook, but two days afterwards when they came to demand security, and to inquire who was to guarantee the payment of the promised sum (*confirmator*), and in whose hands as trustee (*sequester*) the money was to be deposited, Staienus, with great affected indignation, declared that Oppianicus had played him false, that the money was not forthcoming, and that, therefore, he (Staienus) was resolved to vote for his condemnation. On the day when the proceedings were concluded, Oppianicus, who knew nothing of the counterplot, demanded, as he was entitled to do by the then existing law, that the jurors should vote openly, in order that it might be ascertained that the bribed jurors were true to their pledges before they received their reward. Singularly enough, when the jury were called upon to vote, it happened that Staienus was not present, being engaged in another court with a private suit of his own. Canutius the advocate of Cluentius, endeavoured to take advantage of this circumstance and to hurry on the verdict,[1] upon which Quintius, the counsel for Oppianicus, made a great uproar, insisted that Iunius should wait, and then going forth proceeded to the place where Staienus was engaged and by virtue of his authority, as Tribune of the Plebs, compelled him to return and take his place among the jury. The lots for the first three votes fell upon Bulbus, Staienus, and Gutta,

[1] Cicero (XXX) ingeniously takes advantage of this unjustifiable procedure on the part of Canutius, to shew that Cluentius could have had no private understanding with Staienus, since the former and his counsel were willing that the verdict should be given in the absence of the latter.

when to the amazement of Oppianicus all three gave a verdict of Guilty. The story about bribery had, however, got wind and ten of the jurors who were ignorant of the real state of the affair, but were convinced that there was foul play somewhere, declined voting, five pronounced Oppianicus not guilty, but seventeen, including all the corrupt jurors who were enraged at their disappointment, condemned Oppianicus who was thus found guilty by a majority of two.[1] He succeeded, however, in wresting from Staienus the money deposited in his hands, which the latter afterwards pretended had been lodged with him for the purpose of bringing about a reconciliation between the contending parties. (XXIV—XXVIII. XXXI. XXXVI.)

Cicero speaks of the restitution of a sum of money by Staienus as a notorious and unquestionable fact, which no one attempted to question (XXVIII). The amount, also, 640,000 sesterces, being exactly 40,000 to each of 16 jurors, seemed to afford a strong presumption of the purpose for which it was destined (XXXII).

§ 6.

The death of Oppianicus and the subsequent proceedings of Sassia.[2]

Oppianicus, having been found guilty, went into exile, and Cicero forcibly describes his wretchedness as he wandered about from place to place, disliked, despised and shunned by all. Eventually he fell into bad health while residing in Campania, and his illness was long and severe. When he was beginning to recover, having been informed by a faithful slave named Nicostratus, that Sassia had contracted a criminal intimacy with a neighbouring farmer, he removed to the vicinity of Rome, and soon afterwards died in consequence of a fall from his horse, his medical attendant being a certain Aulus Rupilius.

[1] The vote stood as follows—
Nine jurors of unimpeachable character gave a verdict of guilty, viz.:—P. Octavius Balbus—Q. Considius—M. Iuventius Pedo—L. Caulius Mergus—M. Basilius—C. Caudinus—L. Cassius—Cn. Heius—P. Saturius. See XXXVIII.
Eight jurors, suspected of being venal, also gave a verdict of guilty, viz.:—C. Aelius Staienus—Bulbus—Gutta—P. Popillius—C. Fidiculanius Falcula—M. Aquillius—P. Septimius Scaevola—Egnatius. XXVIII. XXXVI. XLI. XLV. XLVIII.
The five who said *not guilty*, and the ten who said *non liquet* are not named in this speech, but we gather from a passage in the Verrine Orationes (Act. I. 10) that M. Caesonius, colleague of Cicero in the aedileship, was one of these.

[2] LXI—LXVIII.

Immediately after this event, Sassia began to strain every nerve to effect the destruction of Cluentius, feigning to believe that her husband had met with foul play at his hands. She resolved to institute a formal inquiry into the cause of his death. She purchased from Rupilius his slave named Strato, who she pretended had administered poison to her husband's patient, she demanded from young Oppianicus, who was still a boy, Nicostratus, whom she suspected of having betrayed her misconduct, and these two, along with a slave of her own, she put to the torture in the presence of some respectable men, friends of the deceased, trusting that her unhappy victims would be terrified into making statements criminating her son. But although the most excruciating torments were unsparingly applied on two different occasions, the sufferers in the midst of their agony steadfastly maintained that they knew nothing, until at length the witnesses, disgusted by her savage cruelty, compelled her to desist, declaring that the object in view was evidently not to discover the truth, but to wring forth an assertion of what was false. Sassia, thus baffled in her schemes of vengeance, returned home sorrowing over the escape of her son, and then, with singular inconsistency, took into high favour, and established as a medical practitioner at Larinum, that very Strato whom she had put to the torture under the pretext that he had been accessory to the murder of her husband.

For three years, the vindictive malice of this relentless woman, although never slumbering, found no opportunity for action. Towards the close of that period she persuaded her step-son Oppianicus to marry the daughter she had borne to her son-in-law A. Aurius, calculating that she would gain complete ascendancy over the young man by this matrimonial connection, and by the hope which she held out of making him her heir. Very soon after, a robbery accompanied by the murder of two slaves was committed in the house of Sassia, and the crime was brought home to that Strato, the physician, whom we have mentioned above. Sassia eagerly seized this as a plea for again putting Strato to the torture and by dint of threats forced young Oppianicus to give up to her Nicostratus, against whom there was no charge, for the same purpose. On this occasion she obtained, or rather pretended that she had obtained a deposition to the effect that her husband had been poisoned at the instigation of Cluentius, and that the poison had been administered in a piece of bread by an associate of Oppianicus, a certain M. Asellius. On this deposition the

present proceedings against Cluentius were founded. Cicero's reply to the charge is brief and apparently conclusive. He argues—

1. That, after the condemnation of Oppianicus, Cluentius could have had no motive to wish for his death; he certainly had nothing to fear from him, and if he hated him, the worst enemies of Oppianicus instead of seeking to shorten his life would rather have desired that his miserable existence should be protracted to the uttermost.

2. That, although M. Asellius was the associate (*familiaris*) of Oppianicus, no intimacy, but probably rather hostility, existed between him and Cluentius who, therefore, would never have selected him as his agent in the perpetration of such a crime.

3. That, although it was alleged that the poison had been actually administered by Asellius, no proceedings had been taken by young Oppianicus, the present prosecutor, against Asellius.

4. That, for many reasons, it was highly improbable, if poison had really been administered, that bread would have been selected as the vehicle.

5. That there was no proof nor even presumption that Oppianicus had died by poison at all, except that his death had been sudden, a very common occurrence. On the contrary, it was known that he had been long in bad health, that he had met with a severe accident which, acting upon an enfeebled constitution, had produced a fever which carried him off rapidly, and that, if his end had really been hastened it must have been by domestic treachery—that is by Sassia herself.

6. That although Strato, Nicostratus and another slave had been twice cruelly tortured at Rome, three years previously, in the presence of most respectable witnesses, they had persisted in declaring that they knew nothing with regard to the death of Oppianicus.

7. That there was every reason to believe that the depositions upon which the present prosecution was founded had never been emitted at all, but were pure fabrications—for—

(1.) They were not attested by any respectable person, the only witness, apparently, whose name was attached to them, being the farmer who was the paramour of Sassia.

(2.) Of the two slaves who, it was pretended, had made the depositions, one, viz., Nicostratus, was not forthcoming, and the other, Strato, could tell no tales, for as soon as the torture was

over, his tongue had been cut out by order of Sassia, and he had been crucified.

(3.) The form under which the pretended deposition appeared stamped them as forgeries. For, the only pretence for instituting the inquiry had been the murder and robbery committed by Strato, and granting it to be possible, although this was not alleged by Attius, that in the course of the investigation some revelations might have been made casually touching the death of Oppianicus, still the principal subject must have been the facts connected with the robbery and murder. But the depositions produced did not contain one word about the robbery and murder, but were occupied exclusively with statements regarding the death of Oppianicus.

Cicero sums up this portion of the defence by a magnificent peroration, in which he combines and concentrates and exhibits at one view the career of Sassia, with all its lengthened series of atrocious and complicated crimes, from her connection with her son-in-law down to her persecution of her son. He then represents how, at last, after she had despatched her tool, the younger Oppianicus, to Rome, to lodge the impeachment, she lingered behind at Larinum, busied in seeking out and suborning testimony; and how, as soon as she heard that the day for the trial was fixed and at hand, she hurried in all haste to Rome in order to stimulate the accusers and the witnesses by her presence and her wealth. He paints in glowing colours the excitement which prevailed among the inhabitants of the country towns which lay along the route which she traversed; how they flocked out to behold the woman who had undertaken a long and arduous journey from the Upper Sea to the capital, attended by a numerous retinue and furnished with great store of money, to secure, if possible, the condemnation and ruin of her own son; how the crowds who thronged together in order to gratify their curiosity, shrunk in abhorrence from the spectacle of such unnatural and deadly malice; how she was compelled to pass the nights in lonely solitudes, no individual being willing to entertain her as a guest, no community consenting to admit her within their walls, but all regarding the very earth over which she passed as polluted by her steps.

We have noticed above, § 1, that Cluentius was charged with poisoning two other persons in addition to Oppianicus, but these accusations seem to have been entirely groundless.

1. It was said that he made away with a certain C. Vibius Capax, by poison, the motive being that he was his heir. But L. Plaetorius, a Roman senator, gave evidence that Capax died in his house from natural causes, and it turned out that the accusers had made a mistake with regard to the inheritance, which had fallen to a Numerius Cluentius, a person altogether different from Aulus Cluentius.

2. It was said that he caused a cup of poisoned wine to be prepared and presented to young Oppianicus at a banquet, but that a certain young man, Balbutius, had snatched the goblet, and having drained it had died in consequence. Cicero, after dwelling upon the extreme improbability of the story, produced the written testimony of the father of Balbutius, to the effect that his son had died from ordinary sickness, and this evidence was confirmed by the appearance of the father in person.

§ 7.

On the Law under which Cluentius was brought to trial.

Cluentius was impeached under the *Lex Cornelia de Sicariis et Veneficis*, one of the numerous enactments introduced by Sulla in his great Legislative Reform.

It would appear that for nearly seven centuries after the foundation of the city, the only Law against wilful murder was the *Lex Regia* ascribed to Numa—SI QUIS HOMINEM LIBERUM DOLO SCIENS MORTI DUIT PARRICIDAS ESTO—which, we have reason to believe, was adopted in the Code of the XII Tables. The crime, during that long period, was happily so rare that measures of a more definite and stringent character were not called for. Cicero says incidentally in his speech Pro Tullio, § 9—*hoc ita existimavit (sc. M. Lucullus), apud maiores nostros quum et res et cupiditates minores essent, et familiae non magnae magno metu continerentur, ut perraro fieret ut homo occideretur, idque nefarium ac singulare facinus putaretur, nihil opus fuisse iudicio de vi coactis armatisque hominibus*—but in his own days matters had assumed a very different aspect. The disorders caused, all over Italy, by the Social War followed, in the course of a few years, by the civil strife of Marius and Sulla, with its attendant horrors of confiscation and proscription, produced a state of things which threatened to disorganize society. The agents who had been employed by the great leaders to execute their savage orders, and who had squandered in debauchery their

easily won plunder were, when the struggle was over, little disposed or fitted to return at once to regular habits and the occupations of peaceful industry. A numerous and most formidable class of profligate, needy and desperate men had arisen, embracing persons of all ranks, whose aim was to perpetuate the disorders in which, for a time, they had found the means of gratifying their unruly passions. Hence it came to pass that robberies, murders, and deeds of violence under every form, became events of every day occurrence, and the evil had struck so deep and spread so widely that all security for life and property seemed at an end. The mischief, moreover, penetrated into private and domestic life, assassination and poisoning were resorted to without scruple to remove a personal enemy or a troublesome relation, and although some of the statements contained in this speech of Cicero may have been highly coloured and rhetorically exaggerated, he could scarcely have ventured to exhibit to the judge and jury a picture of which the outlines at least were not true to nature, and copied from scenes with which they and his countrymen in general were familiar.

Sulla, as soon as his power was firmly established, made great exertions to repress the excesses for which he himself was in no small degree responsible, and among many other weighty measures, enacted the law whose title we have given above—a law which must be regarded as of the highest importance in the history of the Roman Code, since it served as the basis of all subsequent legislation on the same class of offences, and is, in consequence, repeatedly referred to and quoted by the jurists of the Empire. Its provisions can be ascertained with tolerable certainty from the Oration now before us and from the Digest, although the statements contained in the latter must be received with a certain amount of caution, as the original statute is not unfrequently confounded with, or at least not distinguished from the clauses added to it at different periods.

The First Chapter treated of Robbers and Assassins comprehended under the general term *Sicarii*, a name derived from *Sica*, a short crooked sword or dagger which was regarded as their characteristic weapon. The penalties of the law extended not only to those who had actually committed robbery or murder, but to every one who could be proved to have gone about armed with the intent to commit robbery or murder—*qui cum telo ambulaverit hominis necandi furtive faciendi causa.*

The Fifth Chapter treated of Poisoning, and the penalties extended to every one who could be proved to have compounded, sold, bought, kept in his possession or administered poison with intent of causing death—*qui fecerit, vendiderit, emerit, habuerit, dederit.*

Other Chapters treated of Arson, and probably of Parricide.

But in addition to these there was a Chapter which treated of what may be termed Judicial Murder, extending the penalties of the law to those who should be proved to have given false evidence, or induced others to give false evidence, or have combined or conspired in any way to procure the conviction of an innocent man when criminally impeached, or, if acting in the capacity of a judge or juror, have received money for that purpose.

There was a remarkable speciality in this Chapter, for while in the Chapters on Assassination, Poisoning, &c., the penalties of the law were denounced against all who might be proved guilty, without distinction of rank or station, men and women, bond and free, the penalties for what we have termed Judicial Murder were restricted to those who had a seat in the Senate—the order from which, according to the ordinances of Sulla, the jurors in criminal trials were selected exclusively.

Moreover, while, as we have mentioned above, there had been no legislations with regard to murder since the Code of the XII Tables, both C. Gracchus and M. Livius Drusus had enacted laws for the suppression of judicial corruption—the *Lex Sempronia*—NE QUIS IUDICIO CIRCUMVENIRETUR;[1] and the *Lex Livia*—SI QUIS OB REM IUDICATAM PECUNIAM CEPISSET.[2] The *Lex Livia* had been repealed, but the *Lex Sempronia* appears to have continued in force until superseded by the *Lex Cornelia.*

§ 8.

On the particular Chapters of the Lex Cornelia which applied to the case of Cluentius.

It appears that Cluentius was charged with having caused poison to be administered to three different persons (LX—LXII), and this offence would fall under the Fifth Chapter of the Cornelian Law. It is perfectly clear, however, that little stress was laid upon this part of his case by the accuser. Cicero at the very opening of his

[1] Pro Cluent. LV. LVI. [2] Pro Rabir. Post. VII. Appian. B.C. I. 35.

speech calls upon the jury to observe that his opponent *timide et diffidenter attingere rationem veneficii criminum*, and however little weight we may attach to the ex parte statement of a forensic pleader, it is not credible that Cicero would have ventured to pass over the charges so lightly and almost contemptuously had they not been in reality frivolous. Out of the seventy one chapters into which the speech is divided, three only (LX—LXII) are devoted to the exposition and refutation of these alleged murders, and the evidence by which they are rebutted is, if fairly stated, quite irresistible. There can be little doubt that they were employed by the prosecutor merely as a pretext for bringing Cluentius before a Roman jury, and that he counted upon obtaining a conviction by rekindling the flame of odium which had blazed forth so fiercely against all who were mixed up with the *Iudicium Iunianum*. Hence we infer that the chief object kept in view by Attius, in his opening speech, was to refresh the memories of those whom he was addressing, to recall to their recollection all the proceedings connected with the trial of Oppianicus, to remind them of the indignation deep and loud which had prevailed among all classes on account of what was believed to be the condemnation of an innocent man, procured by the most infamous corruption—of the eagerness with which the people had availed themselves of the first opportunity of taking vengeance on Junius, the presiding judge, and on the most obnoxious of the conspirators—of the strong resolution passed by the Senate—of the notorious fact that certain of the jurors upon that trial had, when accused of other offences, been at once found guilty solely in consequence of the hatred with which they were regarded—and of the brand stamped by the Censors on the character of Cluentius, and of those who were supposed to have been his chief agents. Hence it arose that nineteen twentieths of the reply of Cicero are devoted to these topics. His principal aim was to impress upon the jury and on the public in general that they had been grossly deceived, and he strove by drawing a lively picture of the life and crimes of Oppianicus and Sassia to remove what he calls the *inveterata invidia* against his client.

But we have seen above that the *Lex Cornelia* contained a Chapter extending the penalties of the Law to those who should be found guilty of procuring by corrupt practices the condemnation of an innocent man, and had this portion of the statute been worded like the others it would have clearly embraced the charge against Cluentius. But (see p. 29) there was a clause by

which the provisions of this Chapter were expressly limited to persons who had a seat in the Senate. Hence, Cluentius who was of Equestrian rank only was not amenable to it, and Cicero maintains that if he had chosen to take advantage of this point of law, he might have declined to say one word with regard to the conduct of his client in the matter of the trial of Oppianicus. Attius seems to have imagined that Cicero might take this course and to have reprobated it by anticipation, for Cicero, after having completed the vindication of Cluentius, turns to Attius and exclaims (LII)—

Nunc, quoniam ad omnia, quae abs te dicta sunt, T. Atti, de Oppianici damnatione respondi; confiteare necesse est, te opinionem multum fefellisse, quod existimaris, me causam A. Cluentii non facto eius, sed lege defensurum. Nam hoc persaepe dixisti, sic tibi renuntiari, me habere in animo causam hanc praesidio legis defendere

—He then proceeds to declare that, although his client might have availed himself of the terms of the law if he had thought fit, he had absolutely refused to take shelter under this plea, and had peremptorily insisted that the charge against him should be fairly and fully met, desiring nothing so much as a complete investigation of his character. Cicero goes on to state that under these circumstances, he had considered himself bound to explain everything to the jury, and to point out that the real state of the case had been entirely mistaken and misrepresented. But this duty having been discharged, he considered it due to himself as a lawyer, and to those who might at any future time apply to him for advice under similar circumstances, to demonstrate that persons who had a seat in the senate were alone liable to be impeached of conspiracy under the law in question, and in order to establish this proposition he first reads the words of the chapter which related to Conspiracy, and then contrasts them with those of the chapter upon Poisoning under which Cluentius was actually indicted.

Some critics have urged that Cluentius was in reality amenable to all the provisions of the Lex Cornelia, and that the reasoning here employed by Cicero must be regarded merely as an attempt to bewilder and mystify the jurors. But this opinion can scarcely be maintained with success. The words of the statute as quoted by Cicero are perfectly distinct and precise, and it is impossible to suppose that he would have ventured to garble or falsify these extracts, as such a fraud must have, at once, been detected and exposed. The fact is that, according to the letter of the law, Cluentius was exempted from its operation, but not according to the spirit. The object of Sulla in the Chapter was manifestly to

check the corruption which had, for a long period, notoriously prevailed among the judges and jurors on criminal trials, while according to another of his ordinances, the right of serving as jurors was restored to the Senate to the exclusion of all other orders, and therefore the words of this portion of the statute were made applicable to them only. Some years before the trial of Cluentius, in B. C. 70, a change had taken place, and by the *Lex Aurelia* the jurors upon criminal trials were a mixed body chosen from the Senators, the members of the Equestrian Order, and the Tribuni Aerarii. Hence, although no alteration had, at the same period, been introduced into the *Lex Cornelia de Sicariis*, it might have been fairly argued that the clauses in that law which were evidently introduced to repress corruption among the body of criminal jurors, and therefore were made applicable to those who at the time when the law was passed were alone qualified to act as such, ought in fairness to apply to all who were eligible to perform the same functions, although a much larger body of men would now be included.

It is extremely probable that the jurors upon the trial of Cluentius might have been disposed to take this view, and thus Cicero found it necessary to concentrate all his forces upon what he knew to be the weakest side of his position, while he, at the same time, claimed for his client the credit of marching out into the open field, and challenging his opponent when he might have remained in perfect security entrenched behind an impregnable bulwark of legal technicality.

§ 9.

On the Judge before whom Cluentius was tried.

In Chapter LIII, Cicero thus addresses the presiding judge.

Quid est, Q. Naso, cur tu in isto loco sedeas? quae vis est, qua abs te hi iudices, tali dignitate praediti, coërceantur?

And again, in Chapter LIV—

Iubet lex ea, qua lege haec quaestio constituta est, iudicem quaestionis, hoc est, Q. Voconium, cum iis iudicibus, qui ei obvenerint, (vos appellat, iudices,) quaerere de veneno.

From which we infer that the name of the presiding judge was Q. Voconius Naso,[1] and that he held the office of *Iudex Quaestionis*,

[1] The opinion entertained by some that two judges presided at this trial, the one Q. Naso, a Praetor, the other, Q. Voconius, Iudex Quaestionis, is so entirely at variance with everything we know regarding the constitution and practice of the Roman criminal courts, that it would be a waste of time to discuss it.

which we have above,[1] rendered by the expression *Assistant Judge*. Our information with regard to the officials who bore this title is very limited, but it may be useful to state briefly what we actually know, especially as several scholars have freely propounded vague conjectures as if they were ascertained facts.

After the institution of *Quaestiones Perpetuae*, criminal business increased with such rapidity that the Praetors, who were the ordinary presidents of these standing commissions, were unable to overtake all the cases submitted to them, and the appointment of assistant judges became necessary. Although Sulla augmented the number of Praetors from six to eight, crime extended in a much greater ratio, insomuch that not only did the number of Quaestiones exceed the total number of Praetors, but it became necessary to divide the administration of one Quaestio among several judges.[2] Thus, for example, at the time when this speech was delivered, we learn from the words of Cicero himself, that at least three judges were required to administer the Lex Cornelia, under which Cluentius was tried. Two of the Praetors, M. Plaetorius and C. Flaminius took cognizance of trials for assassination (*inter sicarios*), while Q. Voconius Naso was charged with carrying out that portion of the law which related to poisoning and judicial conspiracy. The appointment of an assistant judge in one or more of the courts thus became indispensable, and the title bestowed upon such a functionary was *Iudex Quaestionis*.[3] On the following points we have satisfactory evidence.

1. The *Iudex Quaestionis* discharged the same functions and possessed the same powers in his court as a Praetor. This seems to be clearly established by the terms in which Cicero addresses Q. Voconius Naso in the chapter quoted above, and also in the account given in this speech of the proceedings of C. Junius on the trial of Oppianicus.

[1] Proleg. § 1.

[2] Probably four Praetors only before the time of Sulla, and six after his reform, were available for criminal business. It has been supposed that the Praetor Urbanus and the Praetor Peregrinus had each a Quaestio assigned to him, but the immense increase in the number of citizens which took place after the Social War, and the rapid extension of the foreign relations of Rome must have given rise to an amount of litigation, which would afford full employment to the Civil Judges, without the addition of ordinary criminal cases.

[3] That the office of *Iudex Quaestionis* existed before the time of Sulla is proved from Cic. pro Rosc. Amer. IV. V.

2. The term *Quaesitor* might be applied to either, and both were said *quaerere* or *exercere quaestionem*, or *quaestioni praesse*, but the title *Iudex Quaestionis* was confined to the assistant judge and never applied to a Praetor, at least no example can be quoted in which a Praetor is so designated, while on the other hand we not only know that persons not Praetors held the office of Iudex Quaestionis, but in legal and formal documents the two offices are specially distinguished from each other. Thus C. Iunius who acted as Iudex Quaestionis on the trial of Oppianicus never attained to the Praetorship (XXIX), and M. Fannius who presided as Praetor at the trial of Roscius of Ameria had, previously, held the office of Iudex Quaestionis (Pro. Rosc. Amer. IV). Again the offices are distinguished in a passage quoted by Ulpian (Coll. LL. Mos. I. 3) from this very Lex Cornelia—IS PRAETOR IUDEXVE QUAESTIONIS CUI SORTE OBVENERIT QUAESTIO DE SICARIIS—and in an inscription (Orell. 3827) we find that a certain Tappo had held all the ordinary magistracies from the praetorship downwards and had also been a *Iudex Quaestionis*—C. APPULLEIUS. M. F.[1] TAPPO. PR. AED. TR. PL. Q. IUDEX. QUAESTIONIS. RERUM. CAPITAL.

3. The office was, apparently, not uncommonly, held by those who had previously been aediles. This was the position of C. Iunius (XXIX), and of a certain C. Visellius Varro, a cousin of Cicero, of whom we read in the Brutus (LXXVI)—*is, quum post curulem aedilitatem iudex quaestionis esset, est mortuus.*

4. But although the office was one of dignity it was not constitutionally regarded as a *magistratus*. Of this we have abundant proof. No magistrate could be brought to trial while in office, but C. Iunius was tried and condemned in the same year in which he had acted as Iudex Quaestionis (XXXIII). In a quotation found in the Digest (XLVIII. 8) from the Lex Cornelia de Sicariis, the terms *Magistratus* and *Iudex Quaestionis* are distinguished—QUI QUUM MAGISTRATUS ESSET, PUBLICOVE IUDICIO PRAESSET: QUIVE MAGISTRATUS, IUDEXVE QUAESTIONIS, OB CAPITALEM CAUSAM PECUNIAM ACCEPERIT.—To which we may add that, while a Praetor was not obliged to swear that he would administer justice according to the law under which an accused person was tried, this form was incumbent on a *Iudex Quaestionis*, and one of the charges against C. Iunius was that he had omitted to take the oath (XXXIII).

[1] This inscription was found at Aquileia, but I cannot agree with Bertoli in thinking that the title *Iudex Quaestionis* here refers to a municipal office.

Our authorities do not enable us to state any additional particulars. We do not know whether a fixed number of these officials was elected every year, nor the mode of their election, nor even whether they were elected at stated intervals, or only when a necessity for their services arrived. Nor, supposing a certain number to have been regularly chosen, can we tell how they were distributed, whether one (or more) was attached to each Praetor to be employed at his discretion, or whether a particular department was assigned to a Iudex Quaestionis after the duties of the Praetors had been settled. We have seen above that the Lex Cornelia de Sicariis, &c., contemplated the appointment of a Iudex Quaestionis, and it is remarkable that wherever we hear of a Iudex Quaestionis in reference to any particular trial, it is in every case a trial for murder. But it would be very unsafe to draw any general conclusion from data so limited.

§ 10.

On the peculiar personal difficulties with which Cicero had to contend in conducting the defence of Cluentius.

Cicero fully admits that the conviction of Oppianicus had, at the time when it took place, been almost universally regarded as the result of a foul mercenary conspiracy, and that Cluentius the prosecutor, Junius the presiding judge, and several of the jurors, had, in consequence, become objects of popular detestation. He was precluded from now treating this summarily, as a mere unfounded and empty clamour, for he had himself, on several occasions, to suit his own purposes, spoken in the strongest terms of the infamy of the *Iudicium Iunianum* and of those connected with it, and this not only in general terms but also with reference to certain specific acts.

We have seen, in sketching the general plan of the defence, § 3, that the orator had three great objects in view. He sought to demonstrate, 1. That Oppianicus had been most righteously condemned.—2. That it was contrary both to fact and to reason to suppose that Cluentius had resorted to bribery.—3. That the outcry against Junius and against some of the jurors, especially C. Fidiculanius Falcula, was unjustifiable. But upon every one of these points he had previously committed himself.

1. As to the disgraceful character of the whole business. In the first action against Verres (C. X) he embodies the thoughts and plans of Hortensius and other supporters of Verres, in these words—

Iudex est M. Caesonius, collega nostri accusatoris, homo in rebus iudicandis spectatus et cognitus: quem minime expediat esse in eo consilio, quod conemur aliqua ratione corrumpere: propterea quod iam antea, quum iudex in Iuniano consilio fuisset, TURPISSIMUM ILLUD FACINUS non solum graviter tulit, sed etiam in medium protulit.

2. Again, in the same speech (C. XIII), he directly charges a senator (*Staienus*, viz.,) with having taken a bribe from both Oppianicus and Cluentius.

Cognoscet ex me populus Romanus, quid sit, * * * quod inventus est senator, qui quum iudex esset, in eodem iudicio, et ab reo pecuniam acciperet, quam iudicibus divideret, et ab accusatore, ut reum damnaret.

3. The chief charge against Junius was that when it had become necessary to supply a vacancy in the jury by the process technically termed *subsortitio*, he had, with the connivance of Verres, at that time City Praetor, introduced a person, viz., C. Fidiculanius Falcula, who was not legally eligible; and the charge against Falcula was, that having taken his seat in the jury contrary to law, he had voted for the conviction of Oppianicus, although he had not heard the whole evidence, and was but imperfectly acquainted with the cause.

Twice in the Verrine Orations allusion is made to these proceedings, as examples of judicial corruption with regard to which no doubt existed.

Cognoscet ex me populus Romanus, quid sit * * * quod inventi sunt senatores, qui C. Verre, Praetore Urbano, sortiente, exirent in eum reum, quem incognita causa condemnarent. *In Verr. Act. I.* 13.

Nam de subsortitione illa Iuniana iudicum nihil dico. Quid enim? contra tabulas, quas tu protulisti, audeam dicere. Difficile est. Non enim me tua solum et iudicum auctoritas, sed etiam annulus aureus scribae tui deterret. Non dicam id quod probare difficile est: hoc dicam quod ostendam, multos ex te viros primarios audisse, quum diceres, ignosci tibi oportere, quod falsum codicem protuleris: nam qua invidia C. Iunius conflagrarit, ea, nisi providisses, tibi ipsi tum pereundum esse. *In Verr. Act. II.* i. 61.

But the strongest passage of all is to be found in the Oration Pro Caecina (C. X). In this cause one of the hostile witnesses was the very Fidiculanius Falcula of whom we have spoken above, and him Cicero describes in the following terms—

Decimo vero loco testis expectatus, et ad extremum reservatus, dixit, senator populi Romani, splendor ordinis, decus atque ornamentum iudiciorum, exemplar antiquae religionis, Fidiculanius Falcula: qui quum ita vehemens acerque venisset, ut non modo Caecinam periurio suo laederet, sed etiam mihi videretur irasci; ita eum placidum mollemque reddidi, ut non auderet, sicut meministis, iterum dicere, quot millia fundus suus abesset ab urbe. Nam quum dixisset, minus LIII, populus cum risu acclamavit "ipsa esse." Meminerant enim omnes quantum in Albiano iudicio accepisset. In eum quid dicam, nisi id, quod negare non possit? venisse in consilium publicae quaestionis, quum eius consilii iudex non esset: et in eo consilio, quum causam non audisset, et potestas esset ampliandi, dixisse sibi liquere: quum incognita re iudicare voluisset maluisse condemnare, quam absolvere: quum, si uno minus damnarent, condemnari reus non posset, non ad cognoscendam causam, sed ad explendam damnationem praesto fuisse. Utrum gravius aliquid in quempiam dici potest, quam ad hominem condemnandum, quem nunquam vidisset, neque audisset, adductum pretio esse?

Attius did not fail to take advantage of opinions so forcibly expressed, and appealed to his antagonist himself as a weighty authority against Cluentius, quoting the very words of one of Cicero's orations, probably the thirteenth Chapter of the first Action against Verres.[1] Cicero was thus driven to explain away, as best he might, his own statements, but it may be doubted whether his apology was either judicious or convincing. See note on Chapter L.

§ 11.

The Result of the Trial.

Cluentius was acquitted, although guilty, for Cicero, as we are told by Quintilian (I. O. II. xvii. 21), subsequently boasted that he had thrown dust into the eyes of the jury—*nec Cicero*, QUUM SE TENEBRAS OFFUDISSE IUDICIBUS IN CAUSA CLUENTII GLORIATUS EST, *nihil ipse vidit.*

[1] It seems probable that this was the passage from the words of Cicero in Chapter L—Recitavit ex oratione, nescio qua, Attius, quam meam esse dicebat, cohortationem quandam iudicum ad honeste iudicandum, *et commemorationem tum aliorum iudiciorum, quae probata non essent, tum illius ipsius iudicii Iuniani.*

We are destitute of any source of information which might enable us to dispute the facts stated by Cicero, but we shall have no difficulty in detecting a palpable fallacy in his reasoning on one of the most important points of the case.

In chapter XXIII, when about to enter upon the details by which he would prove that Oppianicus had endeavoured to bribe the jury by which he was tried, we find the following proposition enunciated.

Unum quidem certe nemo erit tam iniquus Cluentio, qui mihi non concedat, si constet, corruptum illud esse iudicium, aut ab Habito, aut ab Oppianico esse corruptum. Si doceo, non ab Habito, vinco ab Oppianico : si ostendo, ab Oppianico, purgo Habitum.

Quintilian (I. O. V. x. 68) quotes these words, apparently with praise, as an example of what rhetoricians frequently term a *dilemma*. But the escape from the horns is by no means difficult. Cicero argues that since it was undeniable that bribery had been resorted to upon the trial in question, it must have been employed *either* by Habitus *or* by Oppianicus, and, consequently, that to prove the innocence of Cluentius would be to establish the guilt of Oppianicus, or, to prove the guilt of Oppianicus would be to establish the innocence of Habitus. Now if he could have proved, by direct evidence, the innocence of Habitus, nothing more was necessary for his case ; this he does not attempt, and merely urges some plausible *a priori* probabilities, while he exerts all his power in proving the guilt of Oppianicus, and having succeeded in this, claims credit for having triumphantly established the innocence of Habitus. But he carefully keeps out of view a third hypothesis, viz., that both parties might have employed bribery, and this in all likelihood was the truth. We have seen in a quotation from the Verrine Orations (Act. I. 13), given in the last section, that Cicero himself boldly asserted that a senator (Staienus) had been found, who, when acting as a criminal juror, had, in one and the same trial received money from the accused to procure an acquittal, and from the prosecutor to secure a conviction.

Nay, more, from the passage, quoted also in last section, from the oration Pro Caecina, we may perhaps infer the precise sum given by Cluentius. Fidiculanius Falcula, one of the suspected jurors, when examined in the cause of Caecina, was asked how many thousand (*quot millia*)[1] his farm was distant from the city,

[1] *Passuum* being, of course, understood, although the audience choose to fill up the ellipse with *Sextestiorum*.

and on replying "less than fifty-three," a shout arose among the audience that that was the correct number (*ipsa esse*), for they remembered, says Cicero, the amount of what he had received at the trial of Oppianicus. Now we learn from the speech for Cluentius that the sum for which Oppianicus had bargained with Staienus was 42,000 sesterces for each of sixteen jurors, and consequently if Cluentius offered 52,000, the next round number lower than 53 (*minus LIII*), he outbid Oppianicus by 10,000 sesterces a-head and thus gained his object.

§ 12.

On the Text of the Speech for Cluentius.

What may be termed the Common or Vulgate Text of this speech is that which, having been gradually moulded into form by the scholars of the fifteenth, sixteenth and seventeenth centuries, among whom, in so far as Cicero is concerned, Lambinus (1566) holds the first place, was farther elaborated by Graevius, Ernesti, Schütz and others, until it appeared under its best form in the edition of Orelli, published at Zurich in 1826.

The last named editor possessed an advantage not enjoyed by any of his predecessors, for, a few years before he brought his labours to a close, Peyron, Professor of Oriental Languages at Turin, observed that a MS. in the Royal Library, which had formed part of the celebrated collection in the Monastery of St. Columbanus at Bobbio, and which exhibited a work of St. Augustin, was a Palimpsest. By means of an ingenious chemical process the faint traces of the original writing were, to a certain extent, revived, and, by dint of long continued patient labour, at length fully decyphered. The volume, consisting of 56 leaves of parchment, had evidently been made up from a copy of the works of Cicero, and was found to contain fragments of ten orations and of the *Epistolae ad familiares*. Twelve of these leaves contained portions of the *Pro Cluentio*, and although we hesitate to ascribe the writing to a period so early as the 2nd or 3d century, it is, in all probability, not later than the 5th or 6th, and is unquestionably, as far as it goes, the most ancient authority we possess for this oration, and as such deserving of all consideration.

Two or three years after the publication of Orelli's work, the attention of Classen, who was preparing a new edition of this speech, was called by Niebuhr to the superior character of a MS. at

Florence in the Laurentian Library. The excellence of this copy having been fully established led to further search, and a second MS. was found in the Royal Library at Munich, which had been brought from Salzburg, bearing a close resemblance to the former. After a careful examination of these two, Classen arrived at the conclusion that although neither could be regarded as a transcript of the other, both might be traced to a common Archetype very superior to the sources from which the great mass of MSS. on which the ordinary text was founded had been derived: and that although these MSS. had not escaped the notice of earlier editors, many important readings having been introduced from them, yet they had never been collated with sufficient care nor had sufficient weight been attached to their testimony. Accordingly the text of the edition of this speech published by Classen at Bonn in 1831, and accompanied by elaborate critical notes is founded upon these two MSS., and assumes a shape differing materially from the Vulgate.

Again, in 1854, appeared what is termed in the title page, the "second edition improved" (*editio altera emendatior*) of Orelli's Cicero, published under the superintendence of Baiter and Halm. But as far as regards this speech it ought rather to be designated as a second edition of Classen's text. For although Baiter has not servilely followed Classen, he has on almost all the most important points adopted his views, and very rarely adheres to those of Orelli.

Lastly, in 1856 was published that volume of Mr. Long's edition of the speeches of Cicero, a work of which I would speak with great respect, which contains the oration for Cluentius. Mr. Long professes to have modelled his text upon the labours of Classen and Baiter, and therefore where I have been unable to adopt their views, I have been compelled to differ from him also.

§ 13.

On the most important MSS. of the Speech for Cluentius.

The following is the description given by Classen of the two MSS., to which he attaches so much importance.

A. Codex olim Salisburgi, nunc in bibliotheca Regia Monacensi sub no. 35 servatus, seculo fere decimo quinto elegantissima manu in membranis formae maximae conscriptus: Cluentiana oratio inter triginta duas locum vicesimum alterum tenet: sed ex reliquis omnibus, quantum eos obiter percurrendo intellexi, vix ulla insignem varietatem praebet.

B. Codex membranaceus forma 4. mai. in bibliotheca Laurentiana n. 12. plutei XLVIII. Lagom. n. 12. Praeter nostram sedecim Ciceronis orationes continet, sed nullam ceterarum memorabili lectione insignem. Hunc codicem Lagomarsinius a. 1748 d. Aug. 22. contulit, quod ipse nota in libri fronte apposita, ut in omnibus facere consuevit, testatur. De tota hac Lagomarsinii opera in Ciceronis libris impensa adeundus Bandinius in Catalog. codd. Latin. bibl. Medic. T. II. p. 467. et Cl. Peyron. ad Ciceronis orationum fragmenta inedita p. 237.

C. We have already spoken of the Turin Palimpsest, and shall now mention the extent of the different fragments of this speech which it contains.

1. Chapter I. From the commencement down to *quam aequum iudicium* in Chapter III. § 7.
2. Chapter VI. § 13. From *huius opprimendi causa* down to *hominem ac minis* in Chapter VIII. § 24.
3. Chapter XI. § 32. From *Quanto est Oppianicus* down to *triumvir constituunt* in Chapter XIII. § 38.
4. Chapter XXVII. § 74. From *...tiebatur facile Canutius* down to *aliis nonnullis sus...* in Chapter XXIX. § 78.
5. Chapter XXXIV. § 92. From *...entio iudicabatur non inquit* down to *in Fausto tamen* in Chapter XXXIV. § 94.
6. Chapter XXXVI. § 101. From *suscepta sicut in statuis* down to *adduxerat uno iudicio* in Chapter XXXVII. § 103.
7. Chapter XLVI. § 129. From *ignominia quemquam qui* down to *praeditis certe probavisse* in Chapter XLVII. § 131.
8. Chapter LII. § 145. From *...ne lege copiosissime posse defendi* down to *legum imperio et praescripto* in Chapter LIII. § 147.

Besides these there are two other MSS. which are regarded by Baiter as deserving special notice and which are thus described by Classen.

D. Codex olim bibliothecae S. Bartholomaei Faesulis, inter Faesulanos apud Bandinium n. 187. Lagom. 1. membranaceus sec. decimi quinti: lacunarum immunis.

E. Laurentianus plut. LI. n. 10. Lagom. 64. membranaceus sec. undecimi, characteribus Langobardicis, form. 4. Praeter M. Terentii Varronis libros de lingua Latina Ciceronis orationem Cluentianam et Rhetorica ad Herennium continet. Hic liber omnium, quibus usi sumus, antiquissimus, haud dubie pro fonte

habendus eorum, qui sequuntur, et omnium fortasse, in quibus eaedem lacunae apparent.

It will be observed that, in the last sentence reference is made to certain blanks. These are found in a considerable number of the MSS. of this speech, and it is reasonable to believe that the MSS. in which they exactly correspond were all derived, ultimately, from the same archetype. Those which occur in E. are the following.—

1. XXXVI. § 102. From *in tota causa* down to XXXVIII. § 107—*non quaerunt.*
2. XLV. § 127. From *subscripserunt* down to XLVII. § 132—*opinione standum.*
3. LIV. § 149. From *dicenda est* down to LVI. § 154—*quae tunc.*
4. LXIII. § 176. From *quendam* down to LXV. § 182—*et ceterorum honestissimorum*

It may be remarked that the blanks (3) and (4) occur in a greater number of MSS. than (1) and (2), and that in several MSS. where all or some of these blanks originally occured the defect has been supplied by a second hand.

In the notes we shall refer to the above MSS., severally, by the letters A. B. C. D. E., and for the sake of convenience we shall here mention the marks by which the same MSS. are designated in the editions of Classen and Baiter.

This Ed.	Classen.	Baiter.
A.	A.	S.
B.	B.	T.
C.	C.	P.
D.	*d.*	F.
E.	*p.*	M.

We have, in the Preface, hazarded the opinion that Classen attaches undue importance to A. and B. There cannot be a doubt that these MSS. occupy a high place, and that the readings which they afford are deserving of all attention. But Classen goes too far, for wherever they agree in presenting a reading different from and not decidedly and evidently inferior to the Vulgate, he at once adopts it although not found in any other MS., or even when all other MSS. are unanimous in favour of the Vulgate. But before we can consent to impose such implicit faith in the authority of any one or any two MSS., it would be necessary to establish two propositions.

1. That they contain a number of readings peculiar to themselves, and manifestly superior to those which have been generally received.

2. That the number of inferior readings and mistakes is small in comparison with those found in other MSS. of repute.

Let us examine these two propositions in succession.

1. The best criterion of the absolute value of these MSS. must be sought in those readings in which they differ from all other MSS., and thus yield matter which is altogether new. Classen has picked out sixteen corrections of the Vulgate text which he first introduced upon the authority of these MSS. He presents them to us as a choice selection (*praestantiores quasdum eligamus*), and says that these may be regarded as witnesses and vouchers for the excellence of his revision.

The readings in question are as follows:

(1). IV. § 10. *hic autem pro quo dicitur*, &c.
(2). VI. § 16. *nam quae videre*, &c.
(3). VI. § 17. *ego qui ad hominum pericula*, &c.
(4). IX. § 28. *spe optime confirmato*, &c.
(5). XXIII. § 64. *corrumpendi iudicii fuisse*, &c.
(6). XXIV. § 66. *datis muneribus*, &c.
(7). XXV. § 67. *bestiae fame monitae*, &c.
(8). XXVI. § 72. *minime amarus*, &c.
(9). XXVI. § 72. *nationis magis quam generis*, &c.
(10). XXXIV. § 92. *tum populus Romanus*, &c.
(11). XXXV. § 96. *at enim etiam*, &c.
(12). XLI. § 116. *quibus—lites maiestatis essent*, &c.
(13). XLII. § 118. *ex hac mihi concedat*, &c.
(14). XLVI. § 128. *quare qui in bello—deliquerat*, &c.
(15). L. § 140. *quasi, si quid.*
(16). LVIII. § 160. *pro rei dignitate.*

We have examined, in the notes, the whole of these, and indeed all the more important changes introduced by Classen on the authority of A. B., and the conclusion at which we have arrived is, that out of the sixteen various readings presented as the most favourable specimens of the MSS. in question, five only are decided improvements on the Vulgate, viz., those numbered above, (3), (7), (8), (10), and (13)—but of these (8) and (10) can scarcely be regarded as due to A. B., for the mistake in (8) probably arose from the earlier edd. not perceiving that *is* which is found in all MSS. is a contraction for *iis*, and consequently introducing

degustarat instead of *degustarāt*; while C. and many other MSS. have in (10) the letters P. R., which are common abbreviations for *Populus Romanus*, but which were misinterpreted by the transcribers of some inferior MSS. and by some of the earlier edd. Again (7), the superiority of which is not very striking, is found as a correction in the Cod. S. Marc. (the *b* of Classen), in the margin of the Cod. S. Vict., and in Ammianus Marcellinus: the mistake in the common reading in (3), arose from the very common and obvious corruption of *hominum* into *omnium*, and then into *animum*, *animi*, *amici*, and the correction is found among the various readings of C. Stephens: while (13) consists merely in the substitution of one preposition for another.

Of the remaining eleven, six, viz., (4), (5), (6), (11), (15), (16), may be regarded as equal to the vulgate, and are quite destitute of importance; three, viz., (1), (9), (14), appear to me decidedly inferior to the vulgate: (2) is a conjectural emendation approaching closely, it is true, to A. B., but not yielding a satisfactory correction; and (12), which, if true, would be by far the most important of the whole, as it communicates a distinct meaning to a passage otherwise almost unintelligible, appears to me, for the reasons given in the commentary, to be a gloss.

2. With regard to the second point, any one who examines the collation of A. B. as given by Classen and Baiter, will at once arrive at the conclusion that they contain a large number of faulty and inferior readings, and although Classen is disposed to sketch a point in their favour wherever this is practicable, he is constantly compelled to admit the superiority of the Vulgate. We shall give a few examples of errors in one or both of these MSS., confining ourselves to the first ten chapters of the speech.

I. § 3. *dicendo probare—dicendo purgare* B.
II. § 5. *invidia ponatur—invidia puniatur* B.
II. § 6. *domo deferemus—domo referemus* A. B.
... ... *aut libentibus—iubentibus* A.
... ... *et me meum—et* omitted by A. B.
III. § 7. *convicta—coniuncta* A., *convincta* B.
III. § 8. *sicuti dicitur—sicuti dicatur* A. B.
... ... *istius criminis—ipsius criminis* A. B.
IV. § 9. *pecunia esse tentatum—p. e. contemptum* B.
IV. § 10. *Albius—Albinus* A.
... ... *satis facere*—omitted in A. B.
IV. § 11. *gloria adductum*—B. omits *adductum*.

V. § 12. *cupiditate—civitate* A.
... ... *continebatur—continebat* A. B.
VI. § 15. *et praeter hanc unam—et p. hanc causam unam* A. B.
... ... *limen cubiculi—limen cubilis* B.
VI. § 16. *eius molestia—eius modestia* B.
VII. § 20. *teneretur—retineretur* A. B.
... ... *accusator timere—accusator timeret* A. B.
VII. § 21. *interim venit—intervenit* A. B.
VII. § 22. *omnes suos—omnesque* B.
VIII. § 24. *clamore ... ac minis—clamore ... ac nimis* A.
VIII. § 25. *imperatum—impetratum.*
IX. § 27. *sanguine redundantem—sanguinem r.* B.
... ... *Teani—Teano* A. B.
X. § 29. *auditis sine testibus—non sine testibus* A.
X. § 30. *quum haec cognoverit—non haec c.* A.
... ... *Oppianicum mortuum—Opp. mortuum hominem* A. B.
... ... *uxori suae Cluentiae*—B. omits *Cluentiae.*
... ... *amita—amica* A.
... ... *Habiti fuit—Habiti fuisset.*
... ... *illius mortuae*—B. omits *mortuae.*

Now very many of these are palpable blunders, and besides there are about twenty readings in the same ten chapters so decidedly inferior that they are rejected by Classen himself, while out of about twenty changes which he has introduced within the same limits, I have endeavoured to point out in the commentary that not above three at most can be regarded as improvements.

The position of C., the Turin Palimpsest, is very different: although the fragments extend over less than one tenth of the whole oration, we are indebted to it for the restoration of two passages abandoned as hopeless by all editors (XLVI. § 129.—XLVII. § 130), and in VII. § 22, there can be little doubt that it alone has preserved the true number (*CCCC millia*). In not one of these passages do A. B. afford the slightest assistance.

Again, the Turin Palimpsest possesses extrinsic claims in no way shared by A. B. Although it may not be safe to pronounce confidently on the precise century to which it belongs, it is unquestionably by far the oldest MS. of this speech extant, probably at least five hundred years older than even E, while A, according to Classen, belongs to the fifteenth century, and he does not hint that B. is older. Both seem to have been derived from the same archetype, but B. has been carelessly copied and abounds in

omissions. It is curious that, although A. contains thirty-two orations and B. seventeen, in no speech but that for Cluentius do they present various readings worthy of attention.

§ 14.

On the various readings in the speeches of Cicero in general.

A young scholar who takes up what is called a complete critical edition of a Greek or Roman writer, one namely in which all the various readings supplied by MSS. and early editions or derived from conjecture are enumerated and discussed, when he observes that there is scarcely a line of the original in which all our authorities absolutely coincide, and that not unfrequently a clause of three or four words is presented under half-a-dozen different forms, is apt to believe that the text of the Classics is involved in doubt and confusion, that we have no reasonable certainty that we are reading a single sentence exactly as it issued from the lips of the orator, or was indited by the pen of the historian, and that we cannot even feel confident that the general scope and force of their expressions has been correctly transmitted to us. But upon more close examination he will discover that his first impression is altogether erroneous, that the great majority of the various readings are entirely destitute of importance, that, of the remainder, a large number although perhaps occasionally involving some delicate point of grammar or criticism, do not seriously affect the meaning of the passage in which they occur, and that the residue, consisting of those which produce a marked variation in sense, is, considering all circumstances, wonderfully small. These moreover have been so carefully sifted and winnowed by the patient labour of acute and learned men for centuries, that it is not too much to say that, with the exception of a very few sentences which are hopelessly corrupt, and of these in the pleading for Cluentius there are not more than three, or at most four, the Orations of Cicero are, for all practical purposes, as correct as the reports given in our best newspapers of the speeches of our senators and lawyers, while the text of the Greek Tragedians is more certain than that of Shakespeare.

We propose now to divide into classes, a large mass of the various readings given in detail by the editors of Cicero, and to point out that they may be regarded as of no consequence in so far as the meaning of the author is concerned, and it will then be found that when these are struck off, and when those which, although

they cannot be regularly classified, are at once rejected by any competent scholar have been eliminated, the number which require consideration is comparatively trifling.

Class I.

Various readings involving mere questions of orthography.

These are very numerous. We might safely conclude a priori, even if we had no direct evidence, that, during the six hundred years which embrace the classical period of Roman literature, the orthography of many words must have undergone a change, and that different MSS. would present the same words under different shapes, according as they were derived from older or more recent archetypes. Thus in the Palimpsests of Cicero, decyphered by Mai and Peyron, we find generally, although not uniformly, the ancient forms *aliqui, nequi,* &c., for *aliquis, nequis,* &c.; *aliut, aput, illut,* &c., for *aliud, apud, illud,* &c.; *quom, voltus, volgus, pervolgare, exolare,* &c., for *quum, vultus, vulgus, pervulgare, exulare,* &c.; *tribunos* for *tribunus,* and the like; *adulescentia, epistula,*[1] for *adolescentia, epistola; aecum, relicum,* &c., for *aequum, reliquum,* &c.; *totiens, quotiens,* for *toties, quoties; inlatus, perlexit,* for *illatus, pellexit,* and the like; *optinere* for *obtinere,* and the like; *temptare* for *tentare, scriptus* for *scriptus, beneficium* for *veneficium,* and the like; *cetera* for *caetera, kaput* and *karitas* for *caput* and *caritas,* not to mention those words which are written differently in MSS. of all dates, such as *optumus, maxumus, pessumus, optimus, maximus, pessimus,* and many others. Taking a few examples from the speech before us, we find

§ 2. *benefici—veneficii.*
§ 2. *contionibus—concionibus,* and again, § 4. § 5.
§ 3. *consulatur—consolatur.*
§ 4. *pernitiosissima—perniciosissima.*
§ 6. *subiciatis—subiiciatis.*
§ 7. *si qui—si quis.*
§ 7. *aliqui—aliquis.*
§ 7. *benivolentiam—benevolentiam.*
§ 7. *aecum—aequum.*
§ 8. *numquam—nunquam.*
§ 9. *temptatum—tentatum.*

[1] According to Mai, the form *epistula* is that which appears invariably in all the oldest MSS.

§ 11. *cotidianis—quotidianis.*
§ 11. *Sylla—Sulla.*
§ 13. *perlexit—pellexit.*
§ 13. *deliniri—deleniri,*

all within the limits of the first five chapters.

Class II.

Various readings depending merely upon grammatical forms.

In the oldest MSS. we find the double *i* in genitives of the second declension almost always contracted; and *is* not *es* in the termination of the accusative plural of the third declension. The open and contracted forms of the genitive plural in *ium*, of certain datives and ablatives in *iis*, of preterites such as *amavistis*, *audivistis*, and the like, are constantly interchanged according to the caprice or convenience of transcribers. MSS. vary much in representing such words as *animadvertere*, *magnopere* and the like, as compound or split up into their elements, and in the selection of a particular form, where two or more are in common use, as in *inermis* and *inermus*, *hilaris* and *hilarus*, *ut* and *uti*, *sicut* and *sicuti*, *ni* and *nisi*, and the like. Thus

§ 1. *iudici—iudicii*, and again, § 2 and § 3.
§ 1. *venefici—veneficii.*
§ 3. *Cluenti—Cluentii.*
§ 1. *partis—partes.*
§ 5. *vehementis—vehementes.*
§ 5. *prudentum—prudentium.*
§ 9. *isdem—iisdem.*
§ 3. *consuevistis—consuestis.*
§ 16. *audivistis—audistis.*
§ 34. *iudicaverit—iudicarit.*
§ 98. *probarint—probaverint.*
§ 125. *curarit—curaverit.*
§ 1. *animum adverti—animadverti.*
§ 1. *magno opere—magnopere.*
§ 25. *inermum—inermem.*
§ 72. *hilaro—hilari.*
§ 8. *sicut—sicuti.*
§ 10. *ni—nisi,*

to the same class we may refer such variations as *perbrevis mihi* and *per mihi brevis* (§ 2), *cuiuscumquemodi* and *cuiusmodicunque* (§ 17), and many others.

Class III.

Proper Names.

Wherever a proper name, whether of a person or of a place, not perfectly common and familiar, occurs, we almost invariably find that the MSS. not only differ widely from each other, but that they are often inconsistent with themselves. Thus we cannot feel certain whether the name of the personage who is repeatedly mentioned as the agent of Oppianicus in his judicial villanies, was *Scalenus*, or *Stalenus*, or *Scaienus*, or *Staienus*, although the last is probably true, not to mention *Satagenus* and some other varieties which are certainly blunders. So the Senator according to whose advice Cluentius acted (XIX) may have been *M. Baebius*, or *Bebius*, or *Baevius*, or *Bebrius;* and one of the victims of Oppianicus, whose fate is recounted in Chapter XIII, is represented as *Asuvius*, *Asuius* and *Asinius*. The same remark holds good with regard to praenomina, which are omitted, inserted, contracted and varied in a most perplexing manner, and the confusion is of course increased when two or more individuals are named conjointly. Thus in VII. § 21, where we have printed—*M. Aurium et Num. Aurium et Num. Magium*, we find the following accumulation—*M. Aurium et Numerium Aurium—M. N. Aurius—M. et N. Aurios—Marium et N. Aurios—Marcum et Numerium Aurios—Numerium Magium—Cn. Magium.* Moreover, it sometimes happens that a question of grammar is mixed up with a proper name, and thus the complication is increased. Thus, in XVI. § 40, where we have printed *Aletrinate*, we may choose between that and *Aletrinati*, *Alatrinate*, *Alatrinati*,—besides which we have the corruptions *Larinati* and *Alacrinate*.

Class IV.

Slight differences in the arrangement of words not producing any difference of sense.

A very large class of various readings. The following examples are all comprised within the limits of a single chapter (VII).

§ 20. *dubitatio ulla—ulla dubitatio.*
..... *scire volui vos—scire vos volui.*
..... *causam accusandi—accusandi causam.*

§ 20. *rebus suis diffidentem—diffidentem rebus suis.*
§ 21. *et fuit apud eum—et apud eum fuit.*
..... *mortuus est—est mortuus.*
..... *is heredem fecit—is fecit heredem.*
..... *sororis filium suae—sororis suae filium.*
§ 22. *mortua est—est mortua.*

Class V.

Words which may be inserted or omitted without producing any material change in the force of the clause.

To this class belong pronouns of the first and second person; in certain cases, possessive and demonstrative pronouns; also some prepositions, especially *in*; the verb *sum*, especially *est* and *esse*; words repeated in the same clause; the word *iudices*, and the like, as will be understood from the following examples.

§ 17. *sed ea—sed ego ea.*
§ 3. *ut vos non existimetis—ut non existimetis.*
§ 9. *quo inimicum suum innocentem—quo inimicum innocentem.*
§ 21. *Magium fratrem suum—Magium fratrem.*
§ 20. *Aurius frater—Aurius frater eius.*
§ 21. *qui nuntiaret—qui nuntiaret ei.*
§ 7. *si quae—si ea quae.*
§ 1. *defensione—in defensione.*
§ 5. *hoc loco—in hoc loco.*[1]
§ 12. *quo enim ipsum nomen—quo enim est ipsum nomen.*
§ 16. *gravius faciendum—gravius esse faciendum.*
§ 23. *delaturum testatur—delaturum esse testatur.*
§ 4. *in aliqua perniciosa flamma atque communi incendio—in aliqua perniciosa flamma atque in communi incendio.*
§ 20. *quam constanter et diligenter—quam constanter et quam diligenter.*
§ 11. *quod quaeso, ne moleste—quod quaeso, iudices, ne moleste.*
..... *pater huiusce, homo—pater huiusce, iudices, homo.*

Under the same head we may rank the omission or insertion of words in certain situations in which it is difficult or impossible to determine, a priori, whether they have been omitted by carelessness or inserted as glosses. Thus in I. § 3—

Quamobrem alteram partem causae sic agemus, ut vos doceamus: alteram [partem] ***sic, ut oremus.***

[1] In VI. § 17—the insertion or omission of the preposition in the clause *in ipsa* is important—in I. § 3 the omission of *in* before *invidia* is positively wrong—and so in many cases.

Where the omission or insertion of the second *partem* makes not the slightest difference in the meaning or construction, but we omit it because, although found in one or two of the very earliest editions, it appears in no good MS., and is exactly the sort of word which would be inserted as a gloss.

Again in III. § 7—*quod in hoc uno*—we retain the word *uno* because, although not absolutely necessary, and omitted in the Editio Princeps and some others, it is found in all MSS.

So there are words which in certain positions may be regarded as expletives and as such were liable to be inserted or omitted. Thus in VI. § 8, we have followed A. B. C. and one other MS. in reading—*sin erunt et aperta*, although all other MSS. have *sin autem erunt*, &c.

Class VI.

Words which, although differing in form, have the same meaning, and may, in very many cases, be interchanged without affecting the force or construction of the sentence.

To this class belong the conjunctions *et, que, ac, atque; tum* and *tunc; ut, uti; sicut, sicuti; ni, nisi;* some of which we have already placed in Class II.

Class VII.

It not unfrequently happens that a singular may be substituted for a plural, and vice versa, and one tense or even one mood substituted for another without materially changing the meaning, and from this source many discrepancies arise. Thus—

§ 6. *hoc postulo—haec postulo.*
§ 30. *hoc cognoverit—haec cognoverit.*
§ 8. *dico—dicam.*
§ 10. *erit—est.*
§ 30. *posset—possit.*
§ 18. *debetis—debebitis—deberetis.*

Class VIII.

Frequently transcribers, trusting to their memory rather than their eye, and having caught the general sense of a passage, sub-

stituted for the true reading a word having no resemblance to that which was before them, but almost, if not altogether identical in meaning. Thus arose such variations as the following:—

§ 16. *verum—sed.*
... *putaretur—videretur.*
§ 17. *defendenda—depellenda.*
... *adiungerer—adhiberer.*

Class IX.

Manifest blunders.

These form a very large class, and seldom give rise to much doubt or difficulty. Thus—

§ 14. *solatium mulierum—solatium malorum.*
§ 15. *amorem—timorem.*
§ 21. *indicit—incidit.*
..... *iudex—index.*
§ 24. *nimis—minis.*
§ 25. *impetratum—imperatum.*
..... *dilationem—delationem.*
§ 30. *peculium—poculum.*

Under this class we may rank also words omitted in one or two MSS. only, where such words are essential. One of the Munich MSS., marked *n* by Classen, abounds in such mistakes. Thus—

§ 13. *sine scelere*
..... *moerore et lacrymis*
§ 19. *coactum*
§ 20. *Oppianicum*

} are entirely omitted in *n*.

Such omissions occur occasionally in the best MSS., and are numerous in B., which is so much relied upon by Classen.

The above sketch will enable the young scholar to understand of what materials the long lists of various readings are chiefly composed, and his own observation will enable him to enlarge the number of classes, and to find examples to any extent. It will be remarked that Classes I and II, although suggesting many questions interesting to the philologer and the grammarian, in no way affect the

meaning, or even the ipsissima verba of the author; that Class III, consisting, as it does, of mere proper names of no historical importance, can seldom if ever give rise to any grave difficulty; that, although the arrangement of words in a Latin sentence is frequently a matter of much importance, such trivial variations as those noted in Class IV, are entirely destitute of weight; that the readings ranked under Classes V, VI, VII, VIII, although each case ought to be carefully scrutinized, and the testimony of MSS. carefully balanced, seldom occasion embarrassment, while those in Class IX almost always admit of easy and certain determination.

The fragments of this speech contained in the Turin Palimpsest were collated by Peyron, with the text of the Delphin edition, and he has noted between 160 and 170 various readings. Of these about sixty belong to Classes I, II, III; about fifty to Classes IV—VIII; about eleven to Class IX; twelve, although not blunders, are so decidedly inferior that they may be rejected without hesitation; so that out of the whole number four-fifths may at once be set aside, while in inferior MSS. the proportion is very much greater.

In addition to the various readings which admit of regular classification, the critical scholar knows well that certain words from the resemblance which they bear to each other constantly give rise to great apparent but little real perplexity. Thus such words as *(h)ominum,*[1] *ominum, omnium—(h)ominibus,*[1] *ominibus, omnibus* are frequently confounded. There can be scarcely a doubt that the last two words in Chapter V. are correctly exhibited in our text as—*ominibus omnium*—but upon comparing MSS. and early editions we find them represented as—*omnibus omnium—hominibus omnium—omnibus ominum—criminibus omnium—omnibus hominibus hominum—omnibus omnium ominibus—omnibus omnium omnibus—ominibus omnium omnibus—omnibus* alone—*ominibus* alone.

Moreover, it must be remembered that the most ancient MSS. were all written in capitals and continuously, that is, without regular punctuation and without separation of words. There were numerous abbreviations introduced, some of them common and universally recognized, such as a small horizontal line placed above a vowel to represent *m* or *n*, others peculiar to the individual scribe. By paying attention to these matters

[1] The aspirate is constantly omitted in MSS.

we can explain the origin of many various readings which, at first sight, appear to bear no resemblance to each other. If we wished to enlarge upon this topic it would be necessary to have types cut so as to present exact fac similes of the characters found in MSS., many of which resemble each other more closely than the characters now in use, and consequently were more easily confounded. Thus, in Chapter IX, we have the simple expression—*ex Novia infantem filium*—this written continuously in capitals would be, EXNOVIAINFANTĒFILIV̄. Now, *Novia* being a proper name not found elsewhere in this speech, a transcriber would have doubts as to its limits; secondly, the F in INFANTĒ might be readily mistaken for an E; thirdly, the mark denoting M might be small and faint, and easily overlooked; fourthly, the same character is used, with a slight modification, to represent either N or VI, Hence we need not be surprised to find that two MSS. have transformed INFANTĒ into NEANTE (*ne ante*), and two others into NEVITE (*ne vitae*); but neither of these yields any meaning, and accordingly one transcriber who found *ne ante*, in order to make sense, omitted the *ne*, from which arose the reading *quum haberet ex Novia ante filium*, while another discarded both words, leaving simply *quum haberet ex Novia filium*.

We may take another example from this speech in which a corruption, considered hopeless, was introduced by a slight and natural oversight in copying words written continuously in capitals. A sentence in XLVII. § 130, long stood thus in all known MSS., and was given up as unintelligible.

Iactata res erat in concione a tribuno seditioso : incognita causa probatum erat illud multitudinem illicitum est contra dicere.

But on the discovery of the Turin Palimpsest the true text was at once restored.

Iactata res erat in concione a tribuno seditioso: incognita causa probatum erat illud multitudini: nemini licitum est contra dicere—which, be it remarked, exactly coincides with the conjectural emendation proposed by Antonius Augustinus. Now, if we write three of the above words continuously in capitals it will be seen at once how the corruption arose—

MVLTITVDININEMINILICITVM.

It will be observed that here IN is repeated to form the termination of *multitudini*, and the commencement of *nemini*, and that INI occurs immediately afterwards. Hence some transcriber whose eye had become confused dropped out one IN, and the whole then became—

MVLTITVDINEMINILICITVM,

which when the words were divided would appear as—*multitudinem inilicitum* and this would at once be corrected into *multitudinem inlicitum*, a combination perfectly satisfactory as far as the mere words are concerned, but destitute of sense.

M. TULLII CICERONIS

PRO

A. CLUENTIO HABITO

ORATIO AD IUDICES.

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A. CLUENTIO HABITO

ORATIO AD IUDICES.

I. 1. Animadverti, iudices, omnem accusatoris orationem in duas divisam esse partes: quarum altera mihi niti et magno opere confidere videbatur invidia iam inveterata iudicii Iuniani: altera tantummodo consuetudinis causa timide et diffidenter attingere rationem veneficii criminum; qua de re lege est haec quaestio constituta. Itaque mihi certum est, hanc eandem distributionem invidiae et criminum sic in defensione servare, ut omnes intelligant, nihil me nec subterfugere voluisse reticendo, nec obscurare dicendo. 2. Sed quum considero, quomodo mihi in utraque re sit elaborandum, altera pars, ea quae propria est iudicii vestri et legitimae veneficii quaestionis, per mihi brevis et non magnae in dicendo contentionis fore videtur: altera autem, quae procul a iudicio remota est, quae concionibus seditiose concitatis accommodatior est, quam tranquillis moderatisque iudiciis, perspicio, quantum in agendo difficultatis, et quantum laboris sit habitura. 3. Sed in hac difficultate illa me res tamen, iudices, consolatur, quod vos de criminibus sic audire consuestis, ut eorum omnem dissolutionem ab oratore quaeratis:

ut non existimetis, plus vos ad salutem reo largiri oportere, quam quantum defensor purgandis criminibus consequi et dicendo probare potuerit: de invidia autem sic inter vos disceptare debetis, ut non, quid dicatur a nobis, sed quid oporteat dici, consideretis. Agitur enim in criminibus A. Cluentii proprium periculum, in invidia, causa communis. Quamobrem alteram partem causae sic agemus, ut vos doceamus: alteram sic, ut oremus. In altera, diligentia vestra nobis adiungenda est: in altera, fides imploranda. Nemo est enim qui invidiae, sine vestro ac sine talium virorum subsidio, possit resistere. 4. Equidem quod ad me attinet, quo me vertam, nescio. Negem fuisse illam infamiam iudicii corrupti? negem illam rem agitatam in concionibus? iactatam in iudiciis? commemoratam in senatu? evellam ex animis hominum tantam opinionem? tam penitus insitam? tam vetustam? Non est nostri ingenii: vestri auxilii est, iudices, huius innocentiae sic in hac calamitosa fama, quasi in aliqua perniciosissima flamma atque in communi incendio subvenire.

II. 5. Etenim sicut aliis in locis parum firmamenti et virium veritas habet: sic in hoc loco falsa invidia imbecilla esse debet. Dominetur in concionibus, iaceat in iudiciis: valeat in opinionibus ac sermonibus imperitorum, ab ingeniis prudentium repudietur: vehementes habeat repentinos impetus, spatio interposito et causa cognita consenescat. Denique illa definitio iudiciorum aequorum, quae nobis a maioribus tradita est, retineatur: ut in iudiciis et sine invidia culpa plectatur, et sine culpa invidia ponatur. 6. Quamobrem a vobis, iudices, antequam de ipsa causa dicere incipio, haec postulo: primum (id quod aequissimum est,) ut ne quid huc praeiudicati afferatis:

etenim non modo auctoritatem, sed etiam nomen iudicum amittemus, nisi hic ex ipsis causis iudicabimus, si ad causas iudicia iam facta domo deferemus. Deinde si quam opinionem iam vestris mentibus comprehendistis, si eam ratio convellet, si oratio labefactabit, si denique veritas extorquebit: ne repugnetis, eamque animis vestris aut libentibus aut aequis remittatis. Tum autem quum ego unaquaque de re dicam, et diluam, ne ipsi, quae contraria sint, taciti cogitationi vestrae subiiciatis: sed ad extremum exspectetis, et me meum dicendi ordinem servare patiamini: quum peroraro, tum, si quid erit praeteritum, animo requiratis.

III. 7. Ego me, iudices, ad eam causam accedere, quae iam per annos octo continuos ex contraria parte audiatur, atque ipsa opinione hominum tacita prope convicta atque damnata sit, facile intelligo: sed, si quis mihi deus vestram ad me audiendum benevolentiam conciliarit, efficiam profecto, ut intelligatis, nihil esse homini tam timendum, quam invidiam: nihil innocenti, suscepta invidia, tam optandum, quam aequum iudicium, quod in hoc uno denique falsae infamiae finis aliquis atque exitus reperiatur. Quamobrem magna me spes tenet, si ea, quae sunt in causa, explicare, atque omnia dicendo consequi potuero, hunc locum consessumque vestrum, quem illi horribilem A. Cluentio ac formidolosum fore putaverunt, eum tandem eius fortunae miserae multumque iactatae portum ac perfugium futurum. 8. Tametsi permulta sunt, quae mihi, antequam de causa dicam, de communibus invidiae periculis dicenda esse videantur: tamen, ne diutius oratione mea suspensa exspectatio vestra teneatur, aggrediar ad crimen cum illa deprecatione, iudices, qua mihi saepius utendum esse in-

telligo, sic ut me audiatis, quasi hoc tempore haec causa primum dicatur, sicuti dicitur: non quasi saepe iam dicta et nunquam probata sit. Hodierno enim die primum veteris istius criminis diluendi potestas est data: ante hoc tempus error in hac causa atque invidia versata est. Quamobrem dum multorum annorum accusationi breviter dilucideque respondeo, quaeso, ut me, iudices, sicuti facere instituistis, benigne attenteque audiatis.

IV. 9. Corrupisse dicitur A. Cluentius iudicium pecunia, quo inimicum innocentem, Statium Albium, condemnaret. Ostendam, iudices, primum, (quoniam caput illius atrocitatis atquae invidiae fuit, innocentem pecunia circumventum,) neminem unquam maioribus criminibus, gravioribus testibus esse in iudicium vocatum; deinde ea de eo praeiudicia esse facta ab ipsis iudicibus, a quibus condemnatus est, ut non modo ab iisdem, sed ne ab aliis quidem ullis, absolvi ullo modo posset. Quum haec docuero, tum illud ostendam, quod maxime requiri intelligo, iudicium illud pecunia esse tentatum, non a Cluentio, sed contra Cluentium: faciamque, ut intelligatis, in tota illa causa quid res ipsa tulerit, quid error affinxerit, quid invidia conflarit.

10. Primum igitur illud est, ex quo intelligi possit, debuisse Cluentium magno opere causae confidere, quod certissimis criminibus et testibus fretus ad accusandum descenderit. Hoc loco faciendum mihi, iudices, est, ut vobis breviter illa, quibus Albius est condemnatus, crimina exponam. Abs te peto, Oppianice, ut me invitum de patris tui causa dicere existimes, adductum fide atque officio defensionis. Etenim tibi si in praesentia satisfacere non potuero, tamen multae mihi ad satisfaciendum reliquo tempore

facultates dabuntur: Cluentio nisi nunc satisfecero, postea mihi satisfaciendi potestas non erit. Simul et illud quis est qui dubitare debeat, contra damnatum et mortuum, pro incolumi et vivo dicere: quum illi, in quem dicitur, damnatio omne ignominiae periculum iam abstulerit, mors vero etiam doloris? hic autem, pro quo dicimus, nihil possit offensionis accipere sine acerbissimo animi sensu ac molestia et sine summo dedecore vitae ac turpitudine? 11. Atque, ut intelligatis, Cluentium non accusatorio animo, non ostentatione aliqua aut gloria adductum, sed nefariis iniuriis, quotidianis insidiis, proposito ante oculos vitae periculo, nomen Oppianici detulisse, paullo longius exordium rei demonstrandae petam: quod quaeso, iudices, ne moleste patiamini. Principiis enim cognitis, multo facilius extrema intelligetis.

V. A. Cluentius Habitus fuit, pater huiusce, iudices, homo non solum municipii Larinatis, ex quo erat, sed etiam regionis illius et vicinitatis, virtute, existimatione, nobilitate facile princeps. Is quum esset mortuus, Sulla et Pompeio consulibus, reliquit hunc annos xv natum, grandem autem et nubilem filiam: quae brevi tempore post patris mortem nupsit A. Aurio Melino, consobrino suo, adolescenti in primis, ut tum habebatur, inter suos et honesto et nobili. 12. Quum essent hae nuptiae plenae dignitatis, plenae concordiae, repente est exorta mulieris importunae nefaria libido, non solum dedecore verum etiam scelere coniuncta. Nam Sassia, mater huius Habiti,— mater enim a me in omni causa, tametsi in hunc hostili odio et crudelitate est, mater, inquam, appellabitur: neque unquam illa ita de suo scelere et immanitate audiet, ut naturae nomen amittat: quo enim est ipsum nomen amantius indulgentiusque

maternum, hoc illius matris, quae multos iam annos, et nunc quum maxime filium interfectum cupit, singulare scelus, maiore odio dignum esse ducetis— ea igitur mater Habiti, Melini illius adolescentis, generi sui, contra quam fas erat, amore capta, primo, neque id ipsum diu, quoquo modo poterat, in illa cupiditate continebatur: deinde ita flagrare coepit amentia, sic inflammata ferri libidine, ut eam non pudor, non pudicitia, non pietas, non macula familiae, non hominum fama, non filii dolor, non filiae maeror a cupiditate revocaret. 13. Animum adolescentis, nondum consilio ac ratione firmatum, pellexit iis omnibus rebus, quibus illa aetas capi ac deleniri potest. Filia, quae non solum illo communi dolore muliebri in eiusmodi viri iniuriis angeretur, sed nefarium matris pellicatum ferre non posset, de quo ne queri quidem sine scelere se posse arbitraretur, ceteros sui tanti mali ignaros esse cupiebat: in huius amantissimi sui fratris manibus et gremio, maerore et lacrymis consenescebat. 14. Ecce autem subitum divortium; quod solatium malorum omnium fore videbatur. Discedit a Melino Cluentia; ut in tantis iniuriis, non invita: ut a viro, non libenter. Tum vero illa egregia et praeclara mater palam exsultare laetitia, ac triumphare gaudio coepit, victrix filiae, non libidinis. Itaque diutius suspicionibus obscuris laedi famam suam noluit: lectum illum genialem, quem biennio ante filiae suae nubenti straverat, in eadem domo sibi ornari et sterni, expulsa atque exturbata filia, iubet. Nubit genero socrus, nullis auspicibus, nullis auctoribus, funestis ominibus omnium.

VI. 15. O mulieris scelus incredibile, et, praeter hanc unam, in omni vita inauditum! o libidinem effrenatam et indomitam! o audaciam singularem!

nonne timuisti, si minus vim deorum, hominumque famam, at illam ipsam noctem facesque illas nuptiales! non limen cubiculi! non cubile filiae! non parietes denique ipsos, superiorum testes nuptiarum! Perfregit ac prostravit omnia cupiditate ac furore: vicit pudorem libido, timorem audacia, rationem amentia. 16. Tulit hoc commune dedecus iam familiae, cognationis, nominis, graviter filius: augebatur autem eius molestia quotidianis querimoniis et assiduo fletu sororis: statuit tamen nihil sibi in tantis iniuriis ac tanto scelere matris gravius esse faciendum, quam ut illa matre ne uteretur: nam quae videre sine summo animi dolore non poterat, ea, si matre uteretur, non solum videre, verum etiam probare suo iudicio putaretur.

17. Initium quod huic cum matre fuerit simultatis audistis. Pertinuisse hoc ad causam, tunc, quum reliqua cognoveritis, intelligetis. Nam illud me non praeterit, cuiusmodicunque mater sit, tamen in iudicio filii de turpitudine parentis dici vix oportere. Non essem ad ullam causam idoneus, iudices, si hoc, quod in communibus hominum sensibus atque in ipsa natura positum atque infixum est, id ego, qui ad hominum pericula defendenda adiungerer, non viderem. Facile intelligo, non modo reticere homines parentum iniurias, sed etiam animo aequo ferre oportere. Sed ego ea, quae ferri possunt, ferenda: quae taceri, tacenda esse arbitror. 18. Nihil in vita vidit calamitatis A. Cluentius, nullum periculum mortis adiit, nihil mali timuit, quod non totum a matre esset conflatum et perfectum. Quae hoc tempore sileret omnia, atque ea, si oblivione non posset, tamen taciturnitate sua tecta esse pateretur: sed ea vero sic agit, ut prorsus reticere nullo modo possit. Hoc enim ipsum iudicium,

hoc periculum, illa accusatio, omnis testium copia, quae futura est, a matre initio est adornata, a matre hoc tempore instruitur, atque omnibus eius opibus et copiis comparatur; ipsa denique nuper Larino, huius opprimendi causa, Romam advolavit. Praesto est mulier audax, pecuniosa, crudelis: instituit accusatores, instruit testes: squalore huius et sordibus laetatur; exitium exoptat: sanguinem suum profundere omnem cupit, dummodo profusum huius ante videat. Haec nisi omnia perspexeritis in causa, temere a nobis illam appellari putatote: sin erunt et aperta et nefaria, Cluentio ignoscere debetis, quod haec a me dici patiatur: mihi ignoscere non deberetis, si tacerem.

VII. 19. Nunc iam summatim exponam, quibus criminibus Oppianicus damnatus sit: ut et constantiam A. Cluentii, et rationem accusationis perspicere possitis. Ac primum causa accusandi quae fuerit, ostendam: ut id ipsum A. Cluentium vi ac necessitate coactum fecisse videatis.

20. Quum manifesto venenum deprehendisset, quod vir matris Oppianicus ei paravisset, et res non coniectura, sed oculis ac manibus teneretur, neque in causa ulla dubitatio posset esse; accusavit Oppianicum. Quam constanter, et quam diligenter, postea dicam: nunc hoc scire vos volui, nullam huic aliam accusandi causam fuisse, nisi uti propositum vitae periculum et quotidianas capitis insidias hac una ratione evitaret. Atque, ut intelligatis, iis accusatum esse criminibus Oppianicum, ut neque accusator timere, neque reus sperare debuerit; pauca vobis illius iudicii crimina exponam: quibus cognitis, nemo vestrum mirabitur, illum, diffidentem rebus suis, ad Staienum atque ad pecuniam confugisse.

21. Larinas quaedam fuit Dinaea, socrus Oppianici: quae filios habuit M. Aurium et Num. Aurium et Num. Magium, et filiam Magiam, nuptam Oppianico. M. Aurius adolescentulus, bello Italico captus apud Asculum, in Q. Sergii senatoris, eius, qui inter sicarios damnatus est, manus incidit, et apud eum fuit in ergastulo. Numerius autem Aurius, frater eius mortuus est, heredemque Num. Magium fratrem reliquit. Postea Magia, uxor Oppianici, mortua est; postremo unus, qui reliquus erat, Dinaeae filius, Num. Magius, est mortuus. Is fecit heredem illum adolescentem Oppianicum, sororis suae filium, eumque partiri cum Dinaea matre iussit. Interim venit index ad Dinaeam, neque obscurus neque incertus, qui nuntiaret ei, filium eius, M. Aurium, vivere, et in agro Gallico esse in servitute. 22. Mulier, amissis liberis, quum unius filii recuperandi spes esset ostentata, omnes suos propinquos filiique sui necessarios convocavit, et ab iis flens petivit, ut negotium susciperent, adolescentem investigarent, sibi restituerent eum filium, quem tamen unum ex multis fortuna reliquum esse voluisset. Haec quum agere instituisset, oppressa morbo est. Itaque testamentum fecit eiusmodi, ut illi filio IIS cccc millia legaret, heredem institueret eundem illum Oppianicum, nepotem suum. Atque his diebus paucis est mortua. Propinqui tamen illi, quemadmodum viva Dinaea instituerant, ita, mortua illa, ad vestigandum Aurium cum eodem illo indice in agrum Gallicum profecti sunt.

VIII. 23. Interim Oppianicus, ut erat, sicuti multis ex rebus reperietis, singulari scelere et audacia, per quendam Gallicanum, familiarem suum, primum illum indicem pecunia corrupit, deinde ipsum Aurium, non magna iactura facta, tollendum interficiendumque

curavit. Illi autem, qui erant ad propinquum investigandum et recuperandum profecti, literas Larinum ad Aurios, illius adolescentis suosque necessarios, mittunt; sibi difficilem esse investigandi rationem, quod intelligerent indicem ab Oppianico esse corruptum. Quas literas A. Aurius, vir fortis et experiens, et domi nobilis, M. illius Aurii propinquus, in foro, palam, multis audientibus, quum adesset Oppianicus, recitat, et clarissima voce, se nomen Oppianici, si interfectum M. Aurium comperisset, delaturum esse testatur. 24. Interim brevi tempore illi, qui erant in agrum Gallicum profecti, Larinum revertuntur: interfectum esse M. Aurium renuntiant. Animi non solum propinquorum, sed etiam omnium Larinatium odio Oppianici, et illius adolescentis misericordia, commoventur. Itaque quum A. Aurius, is qui antea denuntiarat, clamore hominem ac minis insequi coepisset, Larino profugit, et se in castra clarissimi viri, Q. Metelli, contulit. 25. Post illam autem fugam, et sceleris et conscientiae testem, nunquam se iudiciis, nunquam legibus, nunquam inermem inimicis committere ausus est: sed per illam L. Sullae vim atque victoriam, Larinum in summo timore omnium cum armatis advolavit: quatuorviros, quos municipes fecerant, sustulit: se a Sulla et alios praeterea tres factos esse dixit: et ab eodem sibi esse imperatum, ut Aurium illum, qui sibi delationem nominis, et capitis periculum ostentarat, et alterum Aurium, et eius C. filium, et Sex. Vibium, quo sequestre in illo indice corrumpendo dicebatur esse usus, proscribendos interficiendosque curaret. Itaque, illis crudelissime interfectis, non mediocri ab eo ceteri proscriptionis et mortis metu terrebantur. His rebus in causa iudicioque patefactis, quis est, qui illum absolvi potuisse arbitraretur?

IX. Atque haec parva sunt: cognoscite reliqua: ut non aliquando condemnatum esse Oppianicum, sed aliquamdiu incolumem fuisse miremini.

26. Primum videte hominis audaciam. Sassiam in matrimonium ducere, Aviti matrem, illam, cuius virum A. Aurium occiderat, concupivit. Utrum impudentior hic, qui postulet, an crudelior illa, si nubat, difficile dictu est. Sed tamen utriusque humanitatem constantiamque cognoscite. 27. Petit Oppianicus, ut sibi Sassia nubat, et id magno opere contendit. Illa autem non admiratur audaciam, non impudentiam aspernatur, non denique illam Oppianici domum, viri sui sanguine redundantem, reformidat: sed quod haberet tres ille filios, idcirco se ab his nuptiis abhorrere respondit. Oppianicus, qui pecuniam Sassiae concupivisset, domo sibi quaerendum remedium existimavit ad eam moram, quae nuptiis afferebatur. Nam, quum haberet ex Novia infantem filium, alter autem eius filius, Papia natus, Teani Apuli, quod abest a Larino XVIII millia passuum, apud matrem educaretur: arcessit subito sine causa puerum Teano: quod facere, nisi ludis publicis, aut festis diebus, antea non solebat. Mater nihil mali misera suspicans mittit. Ille se Tarentum proficisci quum simulasset, eo ipso die puer, quum hora undecima in publico valens visus esset, ante noctem mortuus, et postridie, antequam luceret, combustus est. 28. Atque hunc tantum maerorem matri prius hominum rumor quam quisquam ex Oppianici familia nuntiavit. Illa, quum uno tempore audisset, sibi non solum filium sed etiam exsequiarum munus ereptum, Larinum confestim exanimata venit, et ibi de integro funus iam sepulto filio fecit. Dies nondum decem intercesserant, quum ille alter filius infans necatur. Itaque nubit Oppianico continuo

Sassia, laetanti iam animo et spe optime confirmato. Nec mirum, quae se non nuptialibus donis, sed filiorum funeribus delenitam videret. Ita quod ceteri propter liberos pecuniae cupidiores solent esse, ille propter pecuniam liberos amittere iucundius esse duxit.

X. 29. Sentio, iudices, vos pro vestra humanitate, his tantis sceleribus breviter a me demonstratis, vehementer esse commotos. Quo tandem igitur animo fuisse illos arbitramini, quibus his de rebus non modo audiendum fuit, verum etiam iudicandum? Vos auditis de eo, in quem iudices non estis: de eo, quem non videtis; de eo, quem odisse iam non potestis: de eo, qui et naturae et legibus satisfecit: quem leges exsilio, natura morte multavit. Auditis non ab inimico: auditis sine testibus: auditis, quum ea, quae copiosissime dici possunt, breviter a me strictimque dicuntur. Illi audiebant de eo, de quo iurati sententias ferre debebant: de eo, cuius praesentis nefarium et consceleratum vultum intuebantur: de eo, quem omnes oderant propter audaciam: de eo, quem omni supplicio dignum esse ducebant. Audiebant ab accusatoribus: audiebant verba multorum testium: audiebant, quum unaquaque de re a P. Canutio, homine eloquentissimo, graviter et diu diceretur. 30. Et est quisquam, qui, quum haec cognoverit, suspicari possit, Oppianicum iudicio oppressum et circumventum esse innocentem? Acervatim iam reliqua, iudices, dicam, ut ad ea, quae propiora huius causae et adiunctiora sunt, perveniam.

Vos, quaeso, memoria teneatis, non mihi hoc esse propositum, ut accusem Oppianicum mortuum: sed, quum hoc persuadere vobis velim, iudicium ab hoc non esse corruptum, hoc uti initio ac fundamento defensionis: Oppianicum, hominem sceleratissimum

et nocentissimum esse damnatum: qui uxori suae Cluentiae, quae amita huius Aviti fuit, quum ipse poculum dedisset, subito illa in media potione exclamavit, se maximo cum dolore emori: nec diutius vixit, quam locuta est: nam in ipso sermone hoc et vociferatione mortua est. Et ad hanc mortem tam repentinam, vocemque morientis, omnia praeterea, quae solent essse indicia et vestigia veneni, in illius mortuae corpore fuerunt.

XI. 31. Eodemque veneno C. Oppianicum, fratrem, necavit. Neque est hoc satis: tametsi in ipso fraterno parricidio nullum scelus praetermissum videtur; tamen, ut ad hoc nefarium facinus accederet, aditum sibi aliis sceleribus ante munivit. Nam quum esset gravida Auria, fratris uxor, et iam appropinquare partus videretur: mulierem veneno interfecit, ut una illud, quod erat ex fratre conceptum, necaretur. Post fratrem aggressus est: qui sero, iam exhausto illo poculo mortis, quum et de suo et de uxoris interitu clamaret, testamentumque mutare cuperet, in ipsa significatione huius voluntatis est mortuus. Ita mulierem, ne partu eius ab hereditate fraterna excluderetur, necavit: fratris autem liberos prius vita privavit, quam illi hanc ab natura propriam lucem accipere potuerunt: ut omnes intelligerent, nihil ei clausum, nihil sanctum esse posse, cuius ab audacia, fratris liberos ne materni quidem corporis custodia tegere potuisset. 32. Memoria teneo, Milesiam quandam mulierem, quum essem in Asia, quod ab heredibus secundis accepta pecunia, partum sibi ipsa medicamentis abegisset, rei capitalis esse damnatum: neque iniuria: quae spem parentis, memoriam nominis, subsidium generis, heredem familiae, designatum rei publicae civem, sustulisset. Quanto est Oppianicus

in eadem iniuria maiore supplicio dignus? siquidem illa, quum suo corpori vim attulisset, se ipsa cruciavit: hic autem idem illud effecit per alieni corporis mortem atque cruciatum. Ceteri non videntur in singulis hominibus multa parricidia suscipere posse: Oppianicus inventus est, qui in uno corpore plures necaret.

XII. 33. Itaque, quum hanc eius consuetudinem audaciamque cognosset avunculus illius adolescentis Oppianici, Num. Magius, isque gravi morbo affectus esset, et heredem illum sororis suae filium faceret: amicis adhibitis, praesente matre sua, Dinaea, uxorem suam interrogavit, essetne praegnans: quae quum se esse respondisset, ab ea petivit, ut, se mortuo, apud Dinaeam, quae tum ei mulieri socrus erat, quoad pareret, habitaret, diligentiamque adhiberet, ut id, quod conceperat, servaret, ut salvum parere posset. Itaque ei testamento legat grandem pecuniam a filio, si qui natus esset: ab secundo herede nihil legat. 34. Quid de Oppianico suspicatus sit, videtis: quid iudicarit, obscurum non est. Nam, quum eius filium faceret heredem, eum tutorem liberis non adscripsit. Quid Oppianicus fecerit, cognoscite: ut illum Magium intelligatis non longe animo prospexisse morientem. Quae pecunia mulieri legata erat a filio, si qui natus esset, eam praesentem Oppianicus non debitam mulieri solvit: si haec solutio legatorum, et non merces abortionis appellanda est. Quo illa pretio accepto, multisque praeterea muneribus, quae tum ex tabulis Oppianici recitabantur, spem illam, quam in alvo commendatam a viro continebat, victa avaritia, sceleri Oppianici vendidit. 35. Nihil posse iam ad hanc improbitatem addi videtur. Attendite exitum. Quae mulier obtestatione viri decem illis mensibus ne domum quidem ullam, nisi socrus suae, nosse debuit, haec

quinto mense post viri mortem ipsi Oppianico nupsit. Quae nuptiae non diuturnae fuerunt: erant enim non matrimonii dignitate, sed sceleris societate coniunctae.

XIII. 36. Quid? illa caedes Asinii Larinatis, adolescentis pecuniosi, quam clara tum, recenti re, fuit? quam omnium sermone celebrata? Fuit Avillius quidam Larinas perdita nequitia, et summa egestate, arte quadam praeditus, ad libidines adolescentulorum excitandas accommodatus: qui, ut se blanditiis et assentationibus in Asinii consuetudinem penitus immersit, Oppianicus continuo sperare coepit, hoc se Avillio, tamquam aliqua machina admota, capere Asinii adolescentiam, et fortunas eius patrias expugnare posse. Ratio excogitata Larini est: res translata Romam. Inire enim id consilium facilius solitudine, perficere rem eiusmodi commodius in turba posse arbitrati sunt. Asinius cum Avillio Romam est profectus. Hos vestigiis Oppianicus consecutus est. Iam ut Romae vixerint, quibus conviviis, quibus flagitiis, quantis et quam profusis sumptibus, non modo conscio, sed etiam conviva et adiutore Oppianico, longum est mihi dicere, praesertim ad alia properanti. Exitum huius assimulatae familiaritatis cognoscite. 37. Quum esset adolescens apud mulierculam quandam, atque ibi pernoctaret, ibi diem posterum commoraretur, Avillius, ut erat constitutum, simulat se aegrotare, et testamentum facere velle. Oppianicus obsignatores ad eum, qui neque Asinium, neque Avillium nossent, adducit, et illum Asinium appellat: ipse, testamento Asinii nomine obsignato, discedit. Avillius illico convalescit. Asinius autem brevi illo tempore, quasi in hortulos iret, in arenarias quasdam extra portam Esquilinam perductus, occiditur. 38. Qui quum unum iam et alterum diem desideraretur: neque in iis locis, ubi

ex consuetudine quaerebatur, inveniretur, et Oppianicus in foro Larinatium dictitaret, nuper se et suos amicos testamentum eius obsignasse: liberti Asinii, et nonnulli amici, quod eo die, quo postremum Asinius visus erat, Avillium cum eo fuisse, et a multis visum esse constabat, in eum invadunt et hominem ante pedes Q. Manilii, qui tum erat triumvir, constituunt. Atque ille continuo, nullo teste, nullo indice, recentis maleficii conscientia perterritus, omnia, ut a me paullo ante dicta sunt, exponit, Asiniumque ab se, consilio Oppianici, interfectum fatetur. 39. Extrahitur domo latitans Oppianicus a Manilio: index Avillius ex altera parte coram tenetur. Hic iam quid reliqua quaeritis? Manilium plerique noratis. Non ille honorem a pueritia, non studia virtutis, non ullum existimationis bonae fructum unquam cogitarat: sed ex petulanti atque improbo scurra, in discordiis civitatis, ad eam columnam, ad quam multorum saepe conviciis perductus erat, tum suffragiis populi pervenerat. Itaque rem cum Oppianico transigit: pecuniam ab eo accipit: causam et susceptam et manifestam relinquit. Ac tum in Oppianici causa, crimen hoc Asinianum quum testibus multis, tum vero indicio Avillii probabatur: in quo, inter allegatos, Oppianici nomen primum esse constabat, eius, quem vos miserum atque innocentem falso iudicio circumventum esse dicitis.

XIV. 40. Quid? aviam tuam, Oppianice, Dinaeam, cui tu es heres, pater tuus non manifesto necavit? ad quam quum adduxisset medicum illum suum, iam cognitum, et saepe victorem [per quem interfecerat plurimos,] mulier exclamat, se ab eo nullo modo velle curari, quo curante suos omnes perdidisset. Tum repente Anconitanum quendam, L. Clodium, pharmacopolam circumforaneum, qui casu tum Larinum

venisset, aggreditur, et cum eo duobus millibus IIS, id quod ipsius tabulis tum est demonstratum, transigit. L. Clodius, qui properaret, cui fora multa restarent, simul atque introductus est, rem confecit: prima potione mulierem sustulit: neque postea Larini punctum est temporis commoratus. 41. Eadem hac Dinaea testamentum faciente, quum tabulas prehendisset Oppianicus, qui gener eius fuisset, digito legata delevit: et, quum id multis locis fecisset, post mortem eius, ne lituris coargui posset, testamentum in alias tabulas transscriptum, signis adulterinis obsignavit. Multa praetereo consulto. Etenim vereor, ne haec ipsa nimium multa esse videantur. Vos tamen eum similem sui fuisse in ceteris vitae partibus existimare debetis. Illum tabulas publicas Larini censorias corrupisse, decuriones universi iudicaverunt. Cum illo iam nemo rationem, nemo rem ullam contrahebat: nemo illum ex tam multis cognatis et affinibus tutorem unquam liberis suis scripsit: nemo illum aditu, nemo congressione, nemo sermone, nemo convivio dignum iudicabat: omnes aspernabantur, omnes abhorrebant, omnes, ut aliquam immanem ac perniciosam bestiam pestemque fugiebant. 42. Hunc tamen hominem tam audacem, tam nefarium, tam nocentem, nunquam accusasset Habitus, iudices, si id praetermittere, salvo capite suo, potuisset. Erat huic inimicus Oppianicus: erat: sed tamen erat vitricus: crudelis et huic infesta mater: attamen mater. Postremo nihil tam remotum ab accusatione, quam Cluentius, et natura, et voluntate, et instituta ratione vitae. Sed quum esset haec illi proposita conditio, ut aut iuste pieque accusaret, aut acerbe indigneque moreretur; accusare, quoquo modo posset, quam illo modo emori, maluit.

43. Atque, ut haec ita esse perspicere possitis, ex-

ponam vobis Oppianici facinus manifesto compertum atque deprehensum: ex quo simul utrumque, et huic accusare, et illi condemnari, necesse fuisse intelligetis.

XV. Martiales quidam Larini appellabantur, ministri publici Martis, atque ei deo veteribus institutis religionibusque Larinatium consecrati: quorum quum satis magnus numerus esset, quumque item, ut in Sicilia permulti Venerei sunt, sic illi Larini in Martis familia numerarentur: repente Oppianicus, eos omnes liberos esse civesque Romanos, coepit defendere. Graviter id decuriones Larinatium cunctique municipes tulerunt. Itaque ab Habito petiverunt, ut eam causam susciperet publiceque defenderet. Habitus quum se ab omni eiusmodi negotio removisset, tamen pro loco, pro antiquitate generis sui, pro eo, quod se non suis solum commodis, sed etiam suorum municipum ceterorumque necessariorum natum esse arbitrabatur, tantae voluntati universorum Larinatium deesse noluit. 44. Suscepta causa Romamque delata, magnae quotidie contentiones inter Habitum et Oppianicum ex utriusque studio defensionis excitabantur. Erat ipse immani acerbaque natura Oppianicus. Incendebat eius amentiam infesta atque inimica filio mater Habiti. Magni autem illi sua interesse arbitrabantur, hunc a causa Martialium demovere. Suberat etiam alia causa maior, quae Oppianici, hominis avarissimi atque audacissimi, mentem maxime commovebat. 45. Nam Habitus, usque ad illius iudicii tempus, nullum testamentum unquam fecerat. Neque enim legare eiusmodi matri poterat animum inducere: neque testamento nomen omnino praetermittere parentis. Id quum Oppianicus sciret, (neque enim erat obscurum,) intelligebat, Habito mortuo, bona eius omnia ad matrem esse ventura: quae ab sese postea,

aucta pecunia maiore praemio, orbata filio minore periculo, necaretur. Itaque his rebus incensus, qua ratione Habitum veneno tollere conatus sit, cognoscite.

XVI. 46. C. et L. Fabricii fratres gemini fuerunt ex municipio Aletrinate, homines inter se quum forma tum moribus similes, municipum autem suorum dissimillimi: in quibus quantus splendor sit, quam prope aequabilis, quam fere omnium constans et moderata ratio vitae, nemo vestrum, ut mea fert opinio, ignorat. His Fabriciis semper usus est Oppianicus familiarissime. Iam hoc fere scitis omnes, quantam vim habeat ad coniungendas amicitias studiorum ac naturae similitudo. Quum illi ita viverent, ut nullum quaestum turpem esse arbitrarentur: quum omnis ab his fraus, omnes insidiae circumscriptionesque adolescentium nascerentur; quumque essent vitiis atque improbitate omnibus noti: studiose, ut dixi, ad eorum se familiaritatem multis iam ante annis Oppianicus applicarat. 47. Itaque tum sic statuit, per C. Fabricium (nam L. erat mortuus) insidias Habito comparare. Erat illo tempore infirma valetudine Habitus. Utebatur autem medico ignobili, sed spectato homine, Cleophanto: cuius servum Diogenem Fabricius ad venenum Habito dandum spe et pretio sollicitare coepit. Servus non incallidus, sed, ut ipsa res declaravit, frugi atque integer, sermonem Fabricii non est aspernatus: rem ad dominum detulit: Cleophantus autem cum Habito est locutus. Habitus statim cum M. Baebio senatore, familiarissimo suo, communicavit: qui qua fide, qua prudentia, qua diligentia fuerit, meminisse vos arbitror. Ei placuit, ut Diogenem Habitus emeret a Cleophanto, quo facilius aut comprehenderetur res eius indicio, aut falsa esse cognosc-

eretur. Ne multis; Diogenes emitur: venenum diebus paucis, (multi viri boni quum ex occulto intervenissent,) pecuniaque obsignata, quae ad eam rem dabatur, in manibus Scamandri, liberti Fabriciorum, deprehenditur. 48. Pro dii immortales! Oppianicum quisquam, his rebus cognitis, circumventum esse dicet?

XVII. Quis unquam audacior? quis nocentior? quis apertior in iudicium adductus est? Quod ingenium, quae facultas dicendi, quae a quoquam excogitata defensio, huic uni crimini potuit obsistere? simul et illud quis est qui dubitet, quin, hac re comperta manifestoque deprehensa, aut obeunda mors Cluentio, aut suscipienda accusatio fuerit?

49. Satis esse arbitror demonstratum, iudices, iis criminibus accusatum esse Oppianicum, ut honeste absolvi nullo modo potuerit. Cognoscite nunc ita reum citatum esse illum, ut, re semel atque iterum praeiudicata, condemnatus in iudicium venerit. Nam Cluentius, iudices, primum nomen eius detulit, cuius in manibus venenum deprehenderat. Is erat libertus Fabriciorum, Scamander. Integrum consilium: iudicii corrupti nulla suspicio: simplex in iudicium causa, certa res, unum crimen allatum est. Hic tum Fabricius, is, de quo ante dixi, qui, liberto damnato, sibi illud impendere periculum videret, quod mihi cum Aletrinatibus vicinitatem, et cum plerisque eorum magnum usum esse sciebat, frequentes eos ad me domum adduxit. Qui quamquam de homine, sicut necesse erat, existimabant: tamen, quod erat ex eodem municipio, suae dignitatis esse arbitrabantur, eum, quibus rebus possent, defendere: idque a me, ut facerem, et ut causam Scamandri susciperem, petebant; in qua causa patroni omne periculum continebatur. 50. Ego, qui neque illis,

talibus viris, ac tam amantibus mei, rem possem ullam negare: neque illud crimen tantum ac tam manifestum esse arbitrarer, sicut ne illi quidem ipsi, qui mihi tum illam causam commendabant, arbitrabantur, pollicitus iis sum, me omnia, quae vellent, esse facturum.

XVIII. Res agi coepta est: citatus est Scamander reus. Accusabat P. Canutius, homo in primis ingeniosus et in dicendo exercitatus: accusabat autem ille quidem Scamandrum verbis tribus, VENENUM ESSE DEPREHENSUM: omnia tela totius accusationis in Oppianicum coniiciebantur: aperiebatur causa insidiarum: Fabriciorum familiaritas commemorabatur: hominis vita et audacia proferebatur: denique omnis accusatio varie graviterque tractata, ad extremum manifesta veneni deprehensione conclusa est. 51. Hic ego tum ad respondendum surrexi, qua cura, dii immortales! qua sollicitudine animi! quo timore! Semper equidem magno cum metu incipio dicere. Quotiescunque dico, toties mihi videor in iudicium venire, non ingenii solum, sed etiam virtutis atque officii: ne aut id profiteri videar, quod non possim implere, quod est impudentiae: aut id non efficere, quod possim, quod est aut perfidiae, aut negligentiae. Tum vero ita sum perturbatus, ut omnia timerem: si nihil dixissem, ne infantissimus: si multa in eiusmodi causa dixissem, ne impudentissimus existimarer.

XIX. Collegi me aliquando, et ita constitui: fortiter esse agendum; illi aetati, qua tum eram, solere laudi dari, etiam si in minus firmis causis hominum periculis non defuissem. Itaque feci: sic pugnavi, sic omni ratione contendi, sic ad omnia confugi, quantum ego assequi potui, remedia ac perfugia causarum, ut hoc, (quod timide dicam,) consecutus sim, ne quis illi causae patronum defuisse

arbitraretur. 52. Sed, ut quidquid ego apprehenderam, statim accusator extorquebat e manibus. Si quaesieram, quae inimicitiae Scamandro cum Habito: fatebatur, nullas fuisse: sed Oppianicum, cuius ille minister fuisset, huic inimicissimum fuisse atque esse dicebat. Sin autem illud egeram, nullum ad Scamandrum morte Habiti venturum emolumentum fuisse: concedebat: sed ad uxorem Oppianici, hominis in uxoribus necandis exercitati, omnia bona Habiti ventura fuisse dicebat. Quum illa defensione usus essem, quae in libertinorum causis honestissima semper existimata est, Scamandrum patrono esse probatum: fatebatur; sed quaerebat, cui probatus esset ipse patronus. 53. Quum ego pluribus verbis in eo commoratus essem, Scamandro factas insidias esse per Diogenem, constitutumque inter eos de alia re fuisse, ut medicamentum, non venenum Diogenes afferret: hoc cuivis usu venire posse: quaerebat, cur in eiusmodi locum, tam abditum, cur solus, cur cum obsignata pecunia venisset. Denique hoc loco causa testibus, honestissimis hominibus, premebatur. M. Baebius de suo consilio Diogenem emptum: se praesente Scamandrum cum veneno pecuniaque deprehensum esse dicebat. P. Quintilius Varus, homo summa religione et summa auctoritate praeditus, de insidiis, quae fierent Habito, et de sollicitatione Diogenis, recenti re, secum Cleophantum locutum esse dicebat. 54. Atque in illo iudicio quum Scamandrum nos defendere videremur, verbo ille reus erat, re quidem vera et periculo tota accusatione Oppianicus. Neque id obscure ferebat, nec dissimulare ullo modo poterat: aderat frequens, advocabat, omni studio gratiaque pugnabat: postremo, id quod maximo malo illi causae fuit, hoc ipso in loco, quasi reus ipse esset,

sedebat. Oculi omnium iudicum non in Scamandrum, sed in Oppianicum coniiciebantur: timor eius, perturbatio, suspensus incertusque vultus, crebra coloris mutatio, quae erant antea suspiciosa, haec aperta et manifesta faciebant.

XX. 55. Quum in consilium iri oporteret, quaesivit ab reo C. Iunius quaesitor, ex lege illa Cornelia, quae tum erat, clam, an palam, de se sententiam ferri vellet. De Oppianici sententia responsum est, quod is Habiti familiarem Iunium esse dicebat, clam velle ferri. Itum est in consilium. Omnibus sententiis, praeter unam, quam suam Staienus esse dicebat, Scamander prima actione condemnatus est. Quis tum erat omnium, qui, Scamandro condemnato, non iudicium de Oppianico factum esse arbitraretur? quid est illa damnatione iudicatum, nisi venenum id, quod Habito daretur, esse quaesitum? Quae porro tenuissima suspicio collata in Scamandrum est, aut conferri potuit, ut is sua sponte necare voluisse Habitum putaretur?

56. Atque hoc tum iudicio facto, et Oppianico, re et existimatione iam, lege et pronuntiatione nondum condemnato, tamen Habitus Oppianicum reum statim non fecit. Voluit cognoscere, utrum iudices in eos solos essent severi, quos venenum habuisse ipsos comperissent, an etiam consilia conscientiasque eiusmodi facinorum supplicio dignas iudicarent. Itaque C. Fabricium, quem propter familiaritatem Oppianici conscium illi facinori fuisse arbitrabatur, reum statim fecit: utique ei locus primus constitueretur, propter causae coniunctionem impetravit. Hic tum Fabricius non modo ad me meos vicinos et amicos, Aletrinates, non adduxit, sed ipse iis neque defensoribus uti postea, neque laudatoribus potuit. 57. Rem enim integram

hominis non alieni, quamvis suspiciosam, defendere, humanitatis esse putabamus: iudicatam labefactare conari, impudentiae. Itaque tum ille, inopia et necessitate coactus, in causa eiusmodi ad Cepasios fratres confugit, homines industrios, atque eo animo, ut quaecunque dicendi potestas esset data, in honore atque in beneficio ponerent.

XXI. Iam hoc [quoque] prope iniquissime comparatum est, quod in morbis corporis, ut quisque est difficillimus, ita medicus nobilissimus atque optimus quaeritur: in periculis capitis, ut quaeque causa difficillima est, ita deterrimus obscurissimusque patronus adhibetur. 58. Citatur reus: agitur causa: paucis verbis accusat, ut de re iudicata, Canutius. Incipit longo et alte petito prooemio respondere maior Cepasius. Primo attente auditur eius oratio. Erigebat animum iam demissum et oppressum Oppianicus. Gaudebat ipse Fabricius. Non intelligebat, animos iudicum, non illius eloquentia, sed defensionis impudentia commoveri. Posteaquam de re coepit dicere, ad ea, quae erant in causa, addebat etiam ipse nova quaedam vulnera: ut, quamquam sedulo faciebat, tamen interdum non defendere, sed praevaricari accusationi videretur. Itaque quum callidissime se dicere putaret, et quum illa verba gravissima ex intimo artificio deprompsisset: *Respicite, iudices, hominum fortunas, respicite dubios variosque casus, respicite C. Fabricii senectutem;* quum hoc, *Respicite*, ornandae orationis causa saepe dixisset, respexit ipse; at C. Fabricius a subselliis, demisso capite, discesserat. 59. Hic iudices ridere: stomachari atque acerbe ferre patronus, causam sibi eripi, et se cetera de illo loco, *Respicite iudices*, non posse dicere: nec quidquam propius est factum, quam ut illum persequeretur, et

collo obtorto ad subsellia reduceret, ut reliqua posset perorare. Ita tum Fabricius, primum suo iudicio, quod est gravissimum, deinde legis vi, et sententiis iudicum est condemnatus.

XXII. Quid est, quod iam de Oppianici causa plura dicamus? Apud eosdem iudices reus est factus, quum his duobus praeiudiciis iam damnatus esset: ab iisdem autem iudicibus, qui Fabriciorum damnatione de Oppianico iudicarant, locus ei primus est constitutus: accusatus est criminibus gravissimis, et iis, quae a me breviter dicta sunt, et praeterea multis, quae ego omnia nunc omitto: accusatus est apud eos, qui Scamandrum, ministrum Oppianici, Fabricium, conscium maleficii, condemnarant. 60. Utrum, per deos immortales! magis est mirandum, quod is condemnatus est, an quod omnino respondere ausus est? Quid enim illi iudices facere potuerunt? qui si innocentes Fabricios condemnassent, tamen in Oppianico sibi constare, et superioribus consentire iudiciis debuerunt. An vero illi sua per se ipsi iudicia rescinderent, quum ceteri soleant, in iudicando, ne ab aliorum iudiciis discrepent, providere? et illi, qui Fabricii libertum, quia minister in maleficio fuerat: patronum, quia conscius, condemnassent: ipsum principem atque architectum sceleris absolverent? et qui ceteros, nullo praeiudicio facto, tameu ex ipsa causa condemnassent: hunc, quem bis condemnatum iam acceperant, liberarent? 61. Tum vero illa iudicia senatoria, non falsa invidia, sed vera atque insigni turpitudine notata, atque operta dedecore et infamia, defensioni locum nullum reliquissent. Quid enim tandem illi iudices responderent, si quis ab iis quaereret: Condemnastis Scamandrum: quo crimine? Nempe quod Habitum, per servum medici, veneno necare voluisset. Quid

Habiti morte Scamander consequebatur? Nihil: sed administer erat Oppianici. Condemnastis C. Fabricium. Quid ita? quia, quum ipse familiarissime Oppianico usus, libertus autem eius in maleficio deprehensus esset, illum expertem eius consilii fuisse non probabatur." Si igitur ipsum Oppianicum, bis suis iudiciis condemnatum, absolvissent, quis tantam turpitudinem iudiciorum, quis tantam inconstantiam rerum iudicatarum, quis tantam libidinem iudicum ferre potuisset?

62. Quod si hoc videtis, quod iam hac omni oratione patefactum est, illo iudicio reum condemnari praesertim ab iisdem iudicibus, qui duo praeiudicia fecissent, necesse fuisse: simul illud videatis necesse est, nullam accusatori causam esse potuisse, cur iudicium vellet corrumpere.

XXIII. Quaero enim abs te, T. Atti, relictis iam ceteris argumentis omnibus, num Fabricios quoque innocentes condemnatos existimes: num etiam illa iudicia pecunia corrupta esse dicas; quibus iudiciis alter a Staieno solo absolutus est, alter etiam ipse se condemnavit. Age, si nocentes: cuius maleficii? numquid praeter venenum quaesitum, quo Habitus necaretur, obiectum est? numquid aliud in illis iudiciis versatum est, praeter hasce insidias Habito ab Oppianico per Fabricios factas? Nihil, nihil, inquam, aliud, iudices, reperietis. Exstat memoria: sunt tabulae publicae: redargue me, si mentior: testium dicta recita: doce, in illorum iudiciis quid, praeter hoc venenum Oppianici, non modo in criminis, sed in maledicti loco sit obiectum. 63. Multa dici possunt, quare ita necesse fuerit iudicari: sed ego occurram exspectationi vestrae, iudices. Nam, etsi a vobis sic audior, ut nunquam benignius, neque attentius quemquam auditum putem: tamen vocat me alio iamdudum

tacita vestra exspectatio, quae mihi obloqui videtur. —Quid ergo? negasne, illud iudicium esse corruptum? —Non nego: sed ab hoc corruptum non esse confirmo. —A quo igitur est corruptum?—Opinor, primum, si incertum fuisset, quisnam exitus illius iudicii futurus esset, veri similius tamen esset, eum potius corrupisse, qui metuisset, ne ipse condemnaretur, quam illum, qui veritus esset, ne alter absolveretur: deinde, quum esset nemini dubium, quid iudicari necesse esset, eum certe potius, qui sibi alia ratione diffideret, quam eum qui omni ratione confideret: postremo, certe potius illum, qui bis apud eos iudices offendisset, quam eum, qui bis causam iis probavisset. 64. Unum quidem certe nemo erit tam iniquus Cluentio, qui mihi non concedat, si constet, corruptum illud esse iudicium, aut ab Habito, aut ab Oppianico esse corruptum. Si doceo, non ab Habito, vinco, ab Oppianico: si ostendo, ab Oppianico, purgo Habitum. Quare, etsi satis docui rationem nullam huic corrumpendi iudicii fuisse: ex quo intelligitur, ab Oppianico esse corruptum, tamen de illo ipso separatim cognoscite.

XXIV. Atque ego illa non argumentabor, quae sunt gravia vehementer: eum corrupisse, qui in periculo fuerit: eum, qui metuerit: eum, qui spem salutis in alia ratione non habuerit: eum, qui semper singulari fuerit audacia. Multa sunt eiusmodi. Verum quum habeam rem non dubiam, sed apertam atque manifestam, enumeratio singulorum argumentorum non est necessaria. 65. Dico, C. Ælio Staieno, iudici, pecuniam grandem Statium Albium ad corrumpendum iudicium dedisse. Num quis negat? Te appello, Oppianice; te, T. Atti: quorum alter eloquentia damnationem illam, alter tacita pietate deplorat. Audete negare, ab Oppianico Staieno iudici

pecuniam datam: negate, negate, inquam, in eo loco. Quid reticetis? At negare non potestis, quod repetistis, quod confessi estis, quod abstulistis. Quo tandem igitur ore mentionem corrupti iudicii facitis, quum ab ista parte iudici pecuniam ante iudicium datam, post iudicium ereptam esse fateamini? 66. Quonam igitur haec modo gesta sunt? Repetam paullo altius, iudices, et omnia, quae in diuturna obscuritate latuerunt, sic aperiam, ut ea cernere oculis videamini. Vos quaeso, ut adhuc me attente audistis, item, quae reliqua sunt, audiatis: profecto nihil a me dicetur, quod non dignum hoc conventu et silentio, dignum vestris studiis atque auribus esse videatur.

Nam, ut primum Oppianicus, ex eo, quod Scamander reus erat factus, quid sibi impenderet, coepit suspicari: statim se ad hominis egentis, audacis, in iudiciis corrumpendis exercitati, tum autem iudicis, Staieni familiaritatem applicavit. Ac primum Scamandro reo, tantum datis muneribus perfecerat, ut eo fautore uteretur cupidiore, quam fides iudicis postulabat. 67. Post autem, quum esset Scamander unius Staieni sententia absolutus, patronus autem Scamandri ne sua quidem sententia liberatus: acrioribus saluti suae remediis subveniendum putavit. Tum a Staieno, sicut ab homine ad excogitandum acutissimo, ad audendum impudentissimo, ad efficiendum acerrimo (haec enim ille et aliqua ex parte habebat, et maiore ex parte se habere simulabat,) auxilium capiti ac fortunis suis petere coepit.

XXV. Iam hoc non ignoratis, iudices, ut etiam bestiae, fame monitae, plerumque ad eum locum, ubi pastae aliquando sint, revertantur. 68. Staienus ille biennio ante, quum causam bonorum Safinii Atellae recepisset, sexcentis millibus nummum se iudicium

corrupturum esse dixerat. Quae quum accepisset a pupillo, suppressit: iudicioque facto, nec Safinio, nec bonorum emptoribus reddidit. Quam quum pecuniam profudisset, et sibi nihil, non modo ad cupiditates suas, sed ne ad necessitatem quidem reliquisset: statuit ad easdem sibi praedas ac suppressiones iudiciales revertendum. Itaque quum Oppianicum iam perditum, et duobus iugulatum praeiudiciis videret: promissis eum suis excitavit abiectum, et simul saluti desperare vetuit. Oppianicus autem orare hominem coepit, ut sibi rationem ostenderet iudicii corrumpendi. 69. Ille autem (quemadmodum ex ipso Oppianico postea est auditum) negavit, quemquam esse in civitate, praeter se, qui id efficere possit. Sed primo gravari coepit, quod aedilitatem se petere cum hominibus nobilissimis, et invidiam atque offensionem timere dicebat. Post exoratus, initio permagnam pecuniam poposcit: deinde ad id pervenit, quod confici potuit, et IIS sexcenta quadraginta millia deferri ad se domum iussit. Quae pecunia simul atque ad eum delata est, homo impurissimus statim coepit in eiusmodi mente et cogitatione versari: nihil esse rationibus utilius quam Oppianicum condemnari; illo absoluto, pecuniam illam aut iudicibus dispertiendam aut ipsi esse reddendam: damnato, repetiturum esse neminem. 70. Itaque rem excogitat singularem. Atque haec, iudices, quae vere dicuntur a nobis, facilius credetis, si cum animis vestris longo intervallo recordari C. Staieni vitam et naturam volueritis. Nam perinde ut opinio est de cuiusque moribus, ita, quid ab eo factum et non factum sit, existimari potest.

XXVI. Quum esset egens, sumptuosus, audax, callidus, perfidiosus, et quum domi suae, miserrimis in locis et inanissimis, tantum nummorum positum

videret; ad omnem malitiam et fraudem versare mentem suam coepit: Demne iudicibus? mihi igitur ipsi, praeter periculum et infamiam, quid quaeretur? nihil excogitem, quamobrem Oppianico damnari necesse sit? quid tandem? nihil enim est, quod fieri non possit. Si quis eum forte casus ex periculo eripuerit, nonne reddendum est? Praecipitantem igitur impellamus, inquit, et perditum prosternamus." 71. Capit hoc consilium, ut pecuniam quibusdam iudicibus levissimis polliceatur: deinde eam postea supprimat: ut, quoniam graves homines sua sponte servere iudicaturos putabat; eos qui leviores erant, destitutione iratos Oppianico redderet. Itaque, ut erat semper praeposterus atque perversus, initium facit a Bulbo: et eum, quod iamdiu nihil quaesierat, tristem atque oscitantem, leviter impellit. "Quid tu? inquit; ecquid me adiuvas, Bulbe, ne gratis rei publicae serviamus?" Ille vero, simul atque hoc audivit: NE GRATIS? "quo voles," inquit, sequar. "Sed quid affers?" Tum ei quadraginta millia, si esset absolutus Oppianicus, pollicetur: et eum, ut ceteros appellet, quibuscum loqui consuesset, rogat: atque etiam ipse conditor totius negotii Guttam adspergit huic Bulbo. 72. Itaque minime amarus iis visus est qui aliquid ex eius sermone speculae degustarant. Unus et alter dies intercesserat, quum res parum certa videbatur: sequester et confirmator pecuniae desiderabatur. Tum appellat hilari vultu hominem Bulbus, ut blandissime potest: "Quid tu, inquit, Paete? (hoc enim sibi Staienus cognomen ex imaginibus Æliorum delegerat, ne si se Ligurem fecisset, nationis magis, quam generis uti cognomine videretur;) qua de re mecum locutus es, quaerunt a me, ubi sit pecunia." Hic ille planus improbissimus,

qaaestu iudiciario pastus, qui illi pecuniae, quam condiderat, spe iam atque animo incubaret, contrahit frontem: (recordamini faciem, atque illos eius fictos simulatosque vultus!) queritur se ab Oppianico destitutum: et, qui esset totus ex fraude et mendacio factus, quique ea vitia, quae a natura habebat, etiam studio atque artificio quodam malitiae condivisset, pulchre asseverat se ab Oppianico destitutum: atque hoc addit testimonii, sua illum sententia, quum palam omnes laturi essent, condemnatum iri.

XXVII. 73. Manarat sermo in consilio, pecuniae quandam mentionem inter iudices esse versatam. Res neque tam fuerat occulta, quam erat occultanda: neque tam erat aperta, quam rei publicae causa aperienda. In ea obscuritate ac dubitatione omnium, Canutio, perito homini, qui quodam odore suspicionis Staienum corruptum esse sensisset, neque dum rem perfectam arbitraretur, placuit repente pronuntiari: DIXERUNT. Hic tum Oppianicus non magno opere pertimuit. Rem a Staieno perfectam esse arbitrabatur. 74. In consilium erant ituri iudices XXXII; sententiis XVI absolutio confici poterat. Quadragena millia nummum in singulos iudices distributa eum numerum sententiarum conficere debebant, ut ad cumulum, spe maiorum praemiorum, ipsius Staieni sententia septimadecima accederet. Atque etiam casu tum, quod illud repente erat factum, Staienus ipse non aderat. Causam nescio quam apud iudicem defendebat. Facile hoc Habitus patiebatur: facile Canutius: at non Oppianicus, neque patronus eius L. Quintius: qui quum esset eo tempore tribunus plebis, convicium C. Iunio, iudici quaestionis, maximum fecit, VT NE SINE AELIO IN CONSILIVM IRETVR: quumque id ei per viatores consulto negligentius agi videretur, ipse e

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publico iudicio ad privatum Staieni iudicium profectus est, et illud pro potestate dimitti iussit: Staienum ipse ad subsellia adduxit. 75. Consurgitur in consilium, quum sententias Oppianicus, quae tum erat potestas, palam ferri velle dixisset, ut Staienus scire posset, quid cuique deberetur. Varia iudicum genera: nummarii pauci: sed omnes irati. Ut qui accipere in campo consuerunt, iis candidatis, quorum nummos suppressos esse putant, inimicissimi solent esse: sic eiusmodi iudices infesti tum reo venerant. Ceteri nocentissimum esse arbitrabantur: sed exspectabant sententias eorum, quos corruptos putabant: ut ex iis constituerent, a quo iudicium corruptum videretur.

XXVIII. Ecce tibi eiusmodi sortitio, ut in primis Bulbo, et Staieno, et Guttae esset iudicandum. Summa omnium exspectatio, quidnam sententiae ferrent leves ac nummarii iudices. Atque illi omnes sine ulla dubitatione condemnant. 76. Hic tum iniectus est hominibus scrupulus, et quaedam dubitatio, quidnam esset actum. Deinde homines sapientes, et ex vetere illa disciplina iudiciorum, qui neque absolvere hominem nocentissimum possent, neque eum, de quo esset orta suspicio, pecunia oppugnatum, re illa incognita, primo condemnare vellent; NON LIQVERE dixerunt. Nonnulli autem severi homines, qui hoc statuerunt, quo quisque animo quid fecerit, spectari oportere, etsi alii pecunia accepta verum iudicabant, tamen nihilo minus se superioribus suis iudiciis constare putabant oportere. Itaque damnarunt. Quinque omnino fuerunt, qui illum vestrum innocentem Oppianicium sive imprudentia, sive misericordia, sive aliqua suspicione, sive ambitione adducti, absolverunt.

77. Condemnato Oppianico, statim L. Quintius, homo maxime popularis, qui omnes rumorum et concionum ventos colligere consuesset, oblatam sibi facultatem putavit, ut ex invidia senatoria posset crescere, quod eius ordinis iudicia minus iam probari populo arbitrabatur. Habetur una atque altera concio vehemens et gravis: accepisse pecuniam iudices, ut innocentem reum condemnarent, tribunus plebis clamitabat: agi fortunas omnium dicebat: nulla esse iudicia: qui pecuniosum inimicum haberet, incolumem esse neminem posse. Homines totius ignari negotii, qui Oppianicum nunquam vidissent, virum optimum, et hominem pudentissimum pecunia oppressum arbitrarentur, incensi suspicione, rem in medium vocare coeperunt, et causam illam totam deposcere. 78. Atque illo ipso tempore in aedes T. Annii, hominis honestissimi, necessarii et amici mei, noctu Staienus, arcessitus ab Oppianico, venit. Iam cetera nota sunt omnibus: ut cum illo Oppianicus egerit de pecunia: ut ille se redditurum esse dixerit: ut eorum sermonem omnem audierint viri boni, qui tum consulto propter in occulto stetissent: ut res patefacta atque in forum prolata, et pecunia omnis a Staieno extorta atque erepta sit.

XXIX. Huius Staieni persona, populo iam nota atque perspecta, ab nulla turpi suspicione abhorrebat: suppressam esse ab eo pecuniam, quam pro reo pronuntiasset, qui erant in concione, non intelligebant. Neque enim docebantur. Versatam esse in iudicio mentionem pecuniae sentiebant: innocentem reum condemnatum esse audiebant: Staieni sententia condemnatum videbant: non gratis id ab eo factum esse, quod hominem norant, iudicabant. Similis in Bulbo, in Gutta, in aliis nonnullis suspicio consistebat. 79. Itaque confiteor, (licet enim iam impune, hoc praesertim in loco, confiteri,) quod Oppianici non modo vita, sed

etiam nomen ante illud tempus populo ignotum fuisset: indignissimum porro videretur, circumventum esse innocentem pecunia: hanc deinde suspicionem augeret Staieni improbitas, et nonnullorum eius similium iudicum turpitudo: causam autem ageret L. Quintius, homo quum summa potestate praeditus, tum ad inflammandos animos multitudinis accommodatus: summam illi iudicio invidiam infamiamque esse conflatam. Atque in hanc flammam recentem C. Iunium, qui illi quaestioni praefuerat, iniectum esse memini, et illum hominem aedilicium, iam praetorem opinionibus hominum constitutum, non disceptatione dicendi, sed clamore, de foro atque adeo de civitate esse sublatum.

80. Neque me poenitet hoc potius tempore, quam illo, causam A. Cluentii defendere. Causa enim manet eadem, quae mutari nullo modo potest: temporis iniquitas atque invidia recessit, ut, quod in tempore mali fuit, nihil obsit: quod in causa boni fuit, prosit. Itaque nunc quemadmodum audiar, sentio, non modo ab iis, quorum iudicium atque potestas est, sed etiam ab illis, quorum tantum est existimatio. At tum si dicerem, non audirer: non quod alia res esset, (immo eadem,) sed tempus aliud. Id adeo sic cognoscite.

XXX. Quis tum auderet dicere, nocentem condemnatum esse Oppianicum? quis nunc id audet negare? Quis tum posset arguere, ab Oppianico iudicium tentatum esse pecunia? quis id hoc tempore infitiari potest? Cui tum liceret docere, Oppianicum reum factum esse tum denique, quum duobus proximis praeiudiciis condemnatus esset? quis est, qui id hoc tempore infirmare conetur? 81. Quare, invidia remota, quam dies mitigavit, oratio mea deprecata est, vestra fides atque aequitas a veritatis disceptatione reiecit: quid est praeterea, quod in causa relinquatur?

Versatam esse in iudicio pecuniam, constat: ea quaeritur, unde profecta sit, ab accusatore, an ab reo? Accusator dicit haec: "Primum, gravissimis criminibus accusabam, ut nihil opus esset pecunia: deinde, condemnatum adducebam, ut ne eripi quidem pecunia posset: postremo, etiam si absolutus esset, mearum tamen omnium fortunarum status incolumis maneret." Quid contra reus? "Primum, ipsam multitudinem et atrocitatem criminum pertimescebam: deinde, Fabriciis propter conscientiam mei sceleris condemnatis, me esse condemnatum, sentiebam: postremo, in eum casum veneram, ut omnis mearum fortunarum status unius iudicii periculo contineretur."

82. Age, quoniam corrumpendi iudicii causas ille multas et graves habuit, hic nullam: profectio ipsius pecuniae requiratur. Confecit tabulas diligentissime Cluentius. Haec autem res habet hoc certe, ut nihil possit neque additum, neque detractum de re familiari latere. Anni sunt octo, quum ista causa in ista meditatione versatur, quum omnia, quae ad eam rem pertinent, et ex huius, et ex aliorum tabulis agitatis, tractatis, inquiritis: quum interea Cluentianae pecuniae vestigium nullum invenitis. Quid? Albiana pecunia vestigiisne nobis odoranda est, an ad ipsum cubile, vobis iudicibus, venire possumus? Tenentur uno in loco IIS IↃↃXL: tenentur apud hominem audacissimum: tenentur apud iudicem. 83. Quid vultis amplius?—At enim Staienus non fuit ab Oppianico, sed a Cluentio ad iudicium corrumpendum constitutus.—Cur eum, quum in consilium iretur, Cluentius et Canutius abesse patiebantur? cur quum in consilium mittebant, Staienum iudicem, cui pecuniam dederant, non requirebant? Oppianicus quaerebat: Quintius flagitabat: sine Staieno ne in consilium

iretur, tribunicia potestate perfectum est.—At condemnavit.—Hanc enim damnationem dederat obsidem Bulbo et ceteris, ut destitutus ab Oppianico videretur. Quare si istinc causa corrumpendi iudicii, istinc pecunia, istinc Staienus, istinc denique omnis fraus et audacia est: hinc pudor, honesta vita, nulla suspicio pecuniae, nulla corrumpendi iudicii causa: patiamini, veritate patefacta, atque omni errore sublato, eo transire illius turpitudinis infamiam, ubi cetera maleficia consistunt: ab eo invidiam discedere aliquando, ad quem nunquam accessisse culpam videtis.

XXXI. 84. At enim pecuniam Staieno dedit Oppianicus, non ad corrumpendum iudicium, sed ad conciliationem gratiae.—Tene hoc, Atti, dicere, tali prudentia, etiam usu atque exercitatione praeditum? Sapientissimum esse dicunt eum, cui, quod opus sit, ipsi veniat in mentem: proxime accedere illum, qui alterius bene inventis obtemperet. In stultitia contra est. Minus enim stultus est is, cui nihil in mentem venit, quam ille, qui, quod stulte alteri venit in mentem, comprobat. Istam conciliationem gratiae Staienus tum recenti re, quum faucibus premeretur, excogitavit, sive ut homines tum loquebantur, a P. Cethego admonitus, [istam dedit conciliationis et gratiae fabulam.] 85. Nam fuisse hunc tum hominum sermonem, recordari potestis: Cethegum, quod hominem odisset, et quod eius improbitatem versari in re publica nollet, et quod videret, eum, qui se ab reo pecuniam, quum iudex esset, clam atque extra ordinem accepisse confessus esset, salvum esse non posse, minus ei fidele consilium dedisse. In hoc si improbus Cethegus fuit, videtur mihi adversarium removere voluisse. Sin erat eiusmodi causa, ut Staienus nummos se accepisse negare non posset: (nihil autem erat periculosius,

nec turpius, quam, ad quam rem accepisset, confiteri:) non est consilium Cethegi reprehendendum. 86. Verum alia causa tum Staieni fuit, alia nunc, Atti, tua est. Ille, quum re premeretur, quodcunque diceret, honestius diceret, quam si, quod erat factum, fateretur. Te vero illud idem, quod tum explosum et eiectum est, nunc retulisse demiror. Qui enim poterat tum in gratiam redire cum Oppianico Cluentius, qui cum matre habebat simultates? Haerebat in tabulis publicis reus et accusator: condemnati erant Fabricii: nec elabi alio accusatore poterat Albius, nec sine ignominia calumniae relinquere accusationem Cluentius.

XXXII. 87. An ut praevaricaretur? Iam id quoque ad corrumpendum iudicium pertinet. Sed quid opus erat ad eam rem iudice sequestre? et omnino, quamobrem tota ista res per Statienum potius, hominem ab utroque alienissimum, sordidissimum, turpissimum, quam per bonum aliquem virum ageretur, et amicum necessariumque communem? Sed quid ego haec pluribus, quasi de re obscura, disputem, quum ipsa pecunia, quae Staieno data est, numero ac summa sua non modo, quanta fuerit, sed etiam ad quam rem fuerit, ostendat? Sexdecim dico iudices, ut Oppianicus absolveretur, corrumpendos fuisse: ad Staienum sexcenta et quadraginta millia nummum esse delata. Si, ut tu dicis, gratiae conciliandae causa, quadraginta istorum accessio millium quid valet? sin, ut nos dicimus, ut quadragena millia nummum sedecim iudicibus darentur, non Archimedes melius potuit describere.

88. At enim iudicia facta permulta sunt, a Cluentio iudicium esse corruptum.—Immo vero ante hoc tempus omnino ista ipsa res suo nomine in iudicium

nunquam est vocata. Ita multum agitata, diu iactata ista res est, ut hodierno die primum causa illa defensa sit, hodierno die primum veritas vocem contra invidiam, his iudicibus freta, miserit. Verumtamen multa ista iudicia quae sunt? Ego enim me ad omnia confirmavi, et sic paravi, ut docerem, quae facta postea iudicia de illo iudicio dicerentur, partim ruinae similiora aut tempestati, quam iudicio et disceptationi fuisse, partim nihil contra Habitum valere, partim etiam pro hoc esse, partim esse eiusmodi, ut neque appellata unquam iudicia sint, neque existimata. 89. Hic ego, magis ut consuetudinem servem, quam quod vos non vestra hoc sponte faciatis, petam a vobis, ut me, dum de his singulis disputo iudiciis, attente audiatis.

XXXIII. Condemnatus est C. Iunius, qui ei quaestioni praefuerat; adde etiam illud, si placet: tum est condemnatus, quum esset iudex quaestionis. Non modo causae, sed ne legi quidem quidquam per tribunum plebis laxamenti datum est. Quo tempore illum a quaestione ad nullum aliud rei publicae munus abduci licebat, eo tempore ad quaestionem ipse abreptus est. At quam quaestionem? Vultus enim vestri, iudices, me invitant, ut, quae reticenda putaram, libeat iam libere dicere. 90. Quid? illa tandem quaestio, aut disceptatio, aut iudicium fuit? Putabo fuisse. Dicat, qui vult hodie de illo populo concitato, cui tum mos gestus est: qua de re Iunius causam dixerit. Quemcunque rogaris, hoc respondebit, quod pecuniam acceperit, quod innocentem circumvenerit. —Est haec opinio.—At, si ita esset: hac lege accusatum esse oportuit, qua accusatur Habitus.—At ipse ea lege quaerebat.—Paucos dies exspectasset Quintius. —At neque privatus accusare, nec, sedata iam invidia,

volebat.—Videtis igitur, non in causa, sed in tempore ac potestate spem omnem accusatoris fuisse.—91. Multam petivit.—Qua lege? Quod in legem non iurasset: quae res nemini unquam fraudi fuit: et quod C. Verres, praetor urbanus, homo sanctus et diligens, subsortitionem eius in eo codice non haberet, qui tum interlitus proferebatur. His de causis C. Iunius condemnatus est, iudices, levissimis et infirmissimis; quas omnino in iudicium afferri non oportuit. Itaque oppressus est, non causa, sed tempore.

XXXIV. 92. Hoc vos Cluentio iudicium putatis obesse oportere? Quam ob causam? Si ex lege subsortitus non erat Iunius, aut si in legem aliquando non iuraverat: idcirco illius damnatione aliquid de Cluentio iudicabatur? "Non, inquit: sed ille idcirco his legibus condemnatus est, quod contra aliam legem commiserat."—Qui hoc confitentur, possunt iidem illud iudicium fuisse defendere? "Ergo idcirco, inquit, infestus tum Populus Romanus Iunio fuit, quod illud iudicium corruptum per eum putabatur." Num igitur hoc tempore causa mutata est? num alia res, alia ratio illius iudicii, alia natura totius negotii nunc est, ac tum fuit? Non opinor, ex iis rebus, quae gestae sunt, rem ullam potuisse mutari. 93. Quid ergo est causae, quod nunc nostra defensio audiatur tanto silentio, tunc Iunio defendendi sui potestas erepta sit? Quia tum in causa nihil erat, praeter invidiam, errorem, suspicionem, conciones quotidianas, seditiose ac populariter concitatas. Accusabat tribunus plebis idem in concionibus, idem ad subsellia: ad iudicium non modo de concione, sed etiam cum ipsa concione veniebat. Gradus illi Aurelii tum novi, quasi pro theatro illi iudicio aedificati videbantur: quos ubi accusator concitatis hominibus complerat,

non modo dicendi ab reo, sed ne surgendi quidem potestas erat. 94. Nuper apud C. Orchinium, collegam meum, locus ab iudicibus Fausto Sullae de pecuniis residuis non est constitutus: non quod illi aut exlegem esse Sullam, aut causam pecuniae publicae contemptam atque abiectam putarent; sed quod, accusante tribuno plebis, conditione aequa disceptari posse non putaverunt? Quid? conferam Sullamne cum Iunio? an hunc tribunum plebis cum Quintio? an vero tempus cum tempore? Sulla maximis opibus, cognatis, affinibus, necessariis, clientibus plurimis: haec autem apud Iunium parva, et infirma, et ipsius labore quaesita atque collecta. Hic tribunus plebis, modestus, pudens, non modo non seditiosus, sed etiam seditiosis adversarius: ille autem acerbus, criminosus, popularis homo ac turbulentus. Tempus hoc tranquillum atque pacatum: illud omnibus invidiae tempestatibus concitatum. Quae quum ita essent, in Fausto tamen [illi iudices] statuerunt, iniqua conditione reum causam dicere, quum adversario eius ad ius accusationis summa vis potestatis accederet.

XXXV. 95. Quam quidem rationem vos, iudices, diligenter, pro vestra sapientia et humanitate, cogitare et penitus perspicere debetis, quid mali, quantum periculi unicuique nostrum inferre possit vis tribunicia, conflata praesertim invidia et concionibus seditiose concitatis. Optimis hercle temporibus, tum, quum homines se non iactatione populari, sed dignitate atque innocentia tuebantur, tamen nec P. Popillius, nec Q. Metellus, clarissimi atque amplissimi viri, vim tribuniciam sustinere potuerunt: nedum his temporibus, his moribus, his magistratibus, sine vestra sapientia, ac sine iudiciorum remediis, salvi esse possimus. 96. Non fuit igitur illud iudicium iudicii simile,

iudices, non fuit: in quo non modus ullus est adhibitus, non mos consuetudoque servata, non causa defensa. Vis illa fuit, et, ut saepe iam dixi, ruina quaedam atque tempestas, et quidvis potius, quam iudicium, aut disceptatio, aut quaestio. Quod si quis est, qui illud iudicium fuisse arbitretur, et qui his rebus iudicatis standum putet: is tamen hanc causam ab illa debet seiungere. Ab illo enim, sive quod in legem non iurasset, sive quod ex lege subsortitus iudicem non esset, multa petita esse dicitur. Cluentii autem ratio cum illis legibus, quibus a Iunio multa petita est, nulla potest ex parte esse coniuncta. 97. At enim etiam Bulbus est condemnatus. Adde, maiestatis: ut intelligas, hoc iudicium cum illo non esse coniunctum. At est hoc illi crimen obiectum. Fateor: sed etiam legionem esse ab eo sollicitatam in Illyrico, C. Cosconii literis et multorum testimoniis planum factum est: quod crimen erat proprium illius quaestionis, et quae res lege maiestatis tenebatur.—At hoc obfuit ei maxime. Iam ista divinatio est: qua si uti licet, vide, ne mea coniectura multo sit verior. Ego enim sic arbitror, Bulbum, quod homo nequam, turpis, improbus, multis flagitiis contaminatus in iudicium sit adductus, idcirco facilius esse damnatum. Tu mihi ex tota causa Bulbi, quod tibi commodum est, eligis, ut id esse secutos iudices dicas.

XXXVI. 98. Quapropter hoc Bulbi iudicium non plus obesse huic causae debet, quam illa, quae commemorata sunt ab accusatore, duo iudicia, P. Popillii, et Ti. Guttae, qui causam de ambitu dixerunt: qui accusati sunt ab iis, qui erant ipsi ambitus condemnati: quos ego non idcirco esse arbitror in integrum restitutos, quod planum fecerint, illos ob rem iudicandam pecuniam accepisse: sed quod iudicibus

probarint, quod in eodem genere, in quo ipsi offendissent, alios reprehendissent, se ad praemia legis venire oportere. Quapropter neminem dubitare existimo, quin illa damnatio ambitus nulla ex parte cum causa Cluentii vestroque iudicio coniuncta esse possit. 99. Quid, quod Staienus est condemnatus? Non dico hoc tempore, iudices, id quod nescio an dici oporteat, illum maiestatis esse damnatum: non recito testimonia hominum honestissimorum, quae in Staienum sunt dicta ab iis, qui Mam. Æmilio, clarissimo viro, legati, et praefecti, et tribuni militares fuerunt: quorum testimoniis planum factum est, maxime eius opera, quum quaestor esset, in exercitu seditionem esse conflatam. Ne illa quidem testimonia recito, quae dicta sunt de IIS IOC; quae ille quum accepisset nomine iudicii Safiniani, sicut in Oppianici iudicio postea, reticuit atque suppressit. 100. Omitto et haec, et alia permulta, quae illo iudicio in Staienum dicta sunt: hoc dico, eandem tum fuisse P. et L. Cominiis, equitibus Romanis, honestissimis hominibus, et disertis, controversiam cum Staieno, quem accusabant, quae nunc mihi est cum Attio. Cominii dicebant idem, quod ego dico, Staienum ab Oppianico pecuniam accepisse, ut iudicium corrumperet: Staienus conciliandae gratiae causa se accepisse dicebat. 101. Irridebatur haec illius reconciliatio, et persona viri boni suscepta, sicut in statuis inauratis, quas posuit ad Iuturnae: quibus subscripsit, REGES AB SE IN GRATIAM ESSE REDUCTOS. Exagitabantur omnes eius fraudes atque fallaciae: tota vita in eiusmodi ratione versata aperiebatur: egestas domestica, quaestus forensis in medium proferebatur: nummarius interpres pacis et concordiae non probabatur. Itaque tum Staienus, quum idem defenderet, quod Attius, con-

demnatus est. 102. Cominii quum hoc agerent, quod nos in tota causa egimus, probaverunt. Quamobrem si Staieni damnatione, Oppianicum iudicium corrumpere voluisse, Oppianicum iudici ad emendas sententias dedisse pecuniam, iudicatum est: quum ita constitutum sit, uti in illa culpa aut Cluentius sit, aut Oppianicus: Cluentii nummus nullus iudici datus ullo vestigio reperietur: Oppianici pecunia post iudicium factum a iudice ablata est: potest esse dubium, quin illa damnatio Staieni, non modo non sit contra Cluentium, sed maxime nostram causam defensionemque confirmet?

XXXVII. 103. Ergo adhuc Iunii iudicium video esse eiusmodi, ut incursionem potius seditionis, vim multitudinis, impetum tribunicium, quam iudicium appellandum putem. Quod si quis illud iudicium appellet, tamen hoc confiteatur necesse est, nullo modo illam multam, quae ab Iunio petita sit, cum Cluentii causa posse coniungi. Illud igitur Iunianum per vim factum est: Bulbi, et Popillii, et Guttae, contra Cluentium non est: Staieni, etiam pro Cluentio est. Videamus ecquod aliud iudicium, quod pro Cluentio sit, proferre possimus.

Dixitne tandem causam C. Fidiculanius Falcula, qui Oppianicum condemnarat, quum praesertim, id quod fuit in illo iudicio invidiosissimum, paucos dies ex subsortitione sedisset? Dixit, et bis quidem dixit. In summam enim L. Quintius invidiam concionibus eum quotidianis, seditiosis et turbulentis, adduxerat. Uno iudicio multa est ab eo petita, sicut ab Iunio, quod non suae decuriae munere, neque ex lege sedisset. Paullo sedatiore tempore est accusatus, quam Iunius, sed eadem fere lege et crimine. Quia nulla in iudicio seditio neque vis neque turba versata est,

prima actione facillime est absolutus. Non numero hanc absolutionem. Nihilo minus enim potest, ut illam multam non commiserit, accepisse tamen ob rem iudicandam * captam nusquam Staienus eadem lege dixit. Proprium crimen illud quaestionis eius non fuit. 104. Fidiculanius quid fecisse dicebatur? Accepisse a Cluentio IIS cccc. Cuius erat ordinis? Senatorii. Qua lege in eo genere a senatore ratio repeti solet, de pecuniis repetundis, ea lege accusatus, honestissime est absolutus. Acta est enim causa more maiorum, sine vi, sine metu, sine periculo: dicta, et exposita, et demonstrata sunt omnia. Adducti iudices sunt, non modo potuisse honeste ab eo reum condemnari, qui non perpetuo sedisset; sed, si aliud is iudex nihil scisset, nisi quae praeiudicia de eo facta esse constarent, audire praeterea nihil debuisse.

XXXVIII. 105. Tum etiam illi quinque, qui imperitorum hominum rumusculos aucupati, tum illum absolverunt, iam suam clementiam laudari magno opere nolebant: a quibus si qui quaereret, sedissentne iudices in C. Fabricium, sedisse se dicerent: si interrogarentur, num quo crimine is esset acusatus, praeterquam veneni eius, quod quaesitum Habito diceretur, negarent: si deinde essent rogati, quid iudicassent, condemnasse se dicerent. Nemo enim absolvit. Eodem modo quaesitum si esset de Scamandro, certe idem respondissent: tametsi ille una sententia est absolutus; sed illam unam nemo tum istorum suam dici vellet. 106. Uter igitur facilius suae sententiae rationem redderet: isne, qui se et sibi, et rei iudicatae constitisse dicit: an ille, qui se in principem maleficii, lenem, in adiutores eius, et conscios, vehementissimum esse respondet? Quorum ego de sententia non debeo disputare. Neque enim dubito, quin ii tales

viri, suspicione aliqua percussi repentina, de statu suo declinarint. Quare eorum, qui absolverunt, misericordiam non reprehendo: eorum, qui in iudicando superiora iudicia secuti sunt sua sponte, non Staieni fraude, constantiam comprobo: eorum vero, qui sibi non liquere dixerunt, sapientiam laudo: qui absolvere eum, quem nocentissimum cognorant, et quem ipsi bis iam antea condemnarant, nullo modo poterant: condemnare, quum tanta consilii infamia et tam atrocis rei suspicio esset iniecta, paullo posterius patefacta re, maluerunt. 107. Ac ne ex facto solum sapientes illos iudicetis, sed etiam ex hominibus ipsis, quod hi fecerunt, rectissime ac sapientissime factum probetis; quis P. Octavio Balbo ingenio prudentior, iure peritior, fide, religione, officio diligentior aut sanctior commemorari potest? Non absolvit. Quis Q. Considio constantior? quis iudiciorum, atque eius dignitatis, quae in iudiciis publicis versari debet, peritior? quis virtute, consilio, auctoritate praestantior? Ne is quidem absolvit. Longum est de singulorum virtute ita dicere: quae, quia cognita sunt ab omnibus, verborum ornamenta non quaerunt. Qualis vir M. Iuventius Pedo fuit ex vetere illa iudicum disciplina? qualis L. Caulius Mergus? M. Basilius? C. Caudinus? qui omnes in iudiciis publicis iam tum florente re publica floruerunt. Ex eodem numero L. Cassius, Cn. Heius, pari et integritate et prudentia: quorum nullius sententia est Oppianicus absolutus. Atque ex his omnibus, natu minimus, ingenio, et diligentia, et religione par iis, quos antea commemoravi, P. Saturius, in eadem sententia fuit. 108. O innocentiam Oppianici singularem! quo in reo, qui absolvit, ambitiosus: qui distulit, cautus: qui condemnavit, constans existimatur.

XXXIX. Haec tum, agitante Quintio, neque in concione, neque in iudicio demonstrata sunt. Neque enim ipse dici patiebatur, nec per multitudinem concitatam consistere cuiquam in dicendo licebat. Itaque ipse, postquam Iunium pervertit, causam totam reliquit. Paucis enim diebus illis et ipse privatus est factus, et hominum studia deferbuisse intelligebat. Quod si, per quos dies Iunium accusavit, Fidiculanium accusare voluisset: respondendi Fidiculanio potestas facta non esset. Ac primo quidem, omnibus illis iudicibus, qui Oppianicum condemnarant, minabatur. 109. Iam insolentiam noratis hominis: noratis animos eius ac spiritus tribunicios. Quod erat odium? dii immortales! quae superbia? quanta ignoratio sui? quam gravis atque intolerabilis arrogantia? qui illud etiam ipsum acerbe tulerit, (ex quo illa nata sunt omnia,) non sibi ac defensioni suae condonatum esse Oppianicum: proinde quasi non satis signi esse debuerit, ab omnibus eum fuisse desertum, qui se ad patronum illum contulisset. Erat enim Romae summa copia patronorum, hominum eloquentissimorum atque amplissimorum, quorum certe aliquis defendisset equitem Romanum, in municipio suo nobilem, si honeste putasset eiusmodi causam posse defendi.

XL. 110. Nam Quintius quidem, quam causam unquam antea dixerat, quum annos ad quinquaginta natus esset? quis eum unquam non modo in patroni, sed in laudatoris, aut advocati loco viderat? qui quod Rostra iamdiu vacua, locumque illum, post adventum L. Sullae a tribunicia voce desertum, oppresserat, multitudinemque iam desuefactam a concionibus ad veteris consuetudinis similitudinem revocaverat, idcirco cuidam hominum generi paullisper iucundior fuit. Atque idem quanto in odio postea suis illis ipsis

fuit, per quos in altiorem locum adscenderat! Neque iniuria. 111. Facite enim, ut non solum mores eius et arrogantiam, sed etiam vultum atque amictum, atque illam usque ad talos demissam purpuram recordemini. Is, quasi non esset ullo modo ferendum, se ex iudicio discessisse victum, rem ab subselliis in Rostra detulit. Et iam querimur saepe, hominibus novis non satis magnos in hac civitate esse fructus? Nego usquam unquam fuisse maiores: ubi, si quis ignobili loco natus ita vivit, ut nobilitatis dignitatem virtute tueri posse videatur, usque eo pervenit, quoad cum industria eum innocentia prosecuta est. 112. Si quis autem hoc uno nititur, quod sit ignobilis, procedit saepe longius, quam si idem ille esset cum iisdem suis vitiis nobilissimus. Ut Quintius (nihil enim dicam de ceteris) si fuisset homo nobilis, quis eum cum illa superbia atque intolerantia ferre potuisset? Quod eo loco fuit, ita tulerunt, ut, si quid haberet a natura boni, prodesse ei putarent oportere, superbiam autem atque arrogantia meius deridendam magis arbitrarentur propter humilitatem hominis, quam pertimescendam.

XLI. Sed, ut illuc revertar: quo tempore Fidiculanius est absolutus, tu qui iudicia facta commemoras, quaero, quid tum esse existimas iudicatum? certe gratis iudicasse.—113. At condemnarat: at causam totam non audierat: at in concionibus omnibus a L. Quintio vehementer erat et saepe vexatus. Illa igitur omnia Quintiana iniqua, falsa, turbulenta, popularia, seditiosa iudicia fuerunt—Esto: potuit esse innocens Falcula. Iam ergo aliquis Oppianicum gratis condemnavit: iam non eos Iunius subsortitus est, qui pecunia accepta condemnarent: iam potuit aliquis ab initio non sedisse, et tamen Oppianicum gratis

condemnasse. Verum, si innocens Falcula, quaero, quis nocens? si hic gratis condemnavit, quis accepit? Nego rem esse ullam in quemquam illorum obiectam, quae Fidiculanio obiecta non sit: aliquid fuisse in Fidiculanii causa, quod idem non esset in ceterorum. 114. Aut hoc iudicium reprehendas tu, cuius accusatio rebus iudicatis niti videbatur, necesse est: aut, si hoc verum esse concedis, Oppianicum gratis condemnatum esse fateare.

Quamquam satis magno argumento esse debet, quod ex tam multis iudicibus, absoluto Falcula, nemo reus factus est. Quid enim mihi damnatos ambitus colligitis, alia lege, certis criminibus, plurimis testibus? quum primum illi ipsi debuerint potius accusari de pecuniis repetundis, quam ambitus. Nam, si in ambitus iudiciis hoc his obfuit, quum alia lege causam dicerent: certe, si propria lege huius peccati adducti essent, multo plus obfuisset. 115. Deinde, si tanta vis fuit istius criminis, ut, qua quisque lege ex illis iudicibus reus factus esset, tamen hac plaga periret: cur, in tanta multitudine accusatorum, tantis praemiis, ceteri rei facti non sunt? Hic profertur id, quod iudicium appellari non oportet, P. Septimio Scaevolae litem eo nomine esse aestimatam. Cuius rei quae consuetudo sit, quoniam apud homines peritissimos dico, pluribus verbis docere non debeo. Nunquam enim ea diligentia, quae solet adhiberi in ceteris iudiciis, eadem, reo damnato, adhibita est. 116. In litibus aestimandis fere iudices, aut, quod sibi eum, quem semel condemnarunt, inimicum putant esse, si qua in eum lis capitis illata est, non admittunt: aut, quod se perfunctos iam esse arbitrantur, quum de reo iudicarunt, negligentius attendunt cetera. Itaque et maiestatis absoluti sunt permulti, quibus damnatis,

de pecuniis repetundis, lites essent aestimatae: et hoc quotidie fieri videmus, ut, reo damnato de pecuniis repetundis, ad quos pervenisse pecunias in litibus aestimandis statutum sit, eos illi iudices absolvant: quod quum fit, non iudicia rescinduntur, sed hoc statuitur, aestimationem litium non esse iudicium. Scaevola condemnatus est aliis criminibus, frequentissimis Apuliae testibus. Omni contentione pugnatum est, ut lis haec capitis aestimaretur. Quae res si rei iudicatae pondus habuisset: ille postea, vel iisdem, vel aliis inimicis, reus hac lege ipsa factus esset.

XLII. 119. Sequitur id, quod illi iudicium appellant, maiores autem nostri nunquam neque iudicium nominarunt, neque proinde, ut rem iudicatam, observaverunt, animadversionem atque auctoritatem censoriam. Qua de re antequam dicere incipio, perpauca mihi de meo officio verba facienda sunt: ut a me quum huiusce periculi, tum ceterorum quoque officiorum et amicitiarum ratio conservata esse videatur. Nam mihi cum viris fortibus, qui censores proxime fuerunt, ambobus est amicitia: cum altero vero (sicuti et plerique vestrum sciunt) magnus usus et summa utriusque officiis constituta necessitudo est. 118. Quare, quidquid de subscriptionibus eorum mihi dicendum erit, eo dicam animo, ut omnem orationem meam non de illorum facto sed de ratione censoria habitam existimari velim: a Lentulo autem, familiari meo, qui a me pro eximia sua virtute summisque honoribus, quos a populo Romano adeptus est, honoris causa nominatur, facile hoc, iudices, impetrabo, ut, quam ipse adhibere consuevit in amicorum periculis quum fidem et diligentiam, tum vim animi libertatemque dicendi, ex hac mihi concedat, ut tantum mihi sumam, quantum sine huius periculo praeterire

non possum. A me tamen, ut aequum est, omnia caute pedetentimque dicentur, ut neque fides huius defensionis relicta, neque cuiusquam aut dignitas lacsa, aut amicitia violata esse videatur.

119. Video igitur, iudices, animadvertisse censores in iudices quosdam illius consilii Iuniani, quum istam ipsam causam subscriberent. Hic primum illud commune proponam, nunquam animadversionibus censoriis hanc civitatem ita contentam, ut rebus iudicatis, fuisse. Neque in re nota consumam tempus exemplis: ponam illud unum: C. Getam, quum a L. Metello et Cn. Domitio, censoribus, ex senatu eiectus esset, censorem ipsum postea esse factum: et, cuius mores a censoribus erant reprehensi, hunc postea et populi Romani, et eorum, qui in ipsum animadverterant, moribus praefuisse. Quod si illud iudicium putaretur, ut ceteri turpi iudicio damnati in perpetuum omni honore ac dignitate privantur, sic hominibus ignominia notatis, neque ad honorem aditus, neque in curiam reditus esset. 120. Nunc, si quem Cn. Lentuli aut L. Gellii libertus furti condemnarit: is, omnibus ornamentis amissis, nunquam ullam honestatis suae partem recuperabit: quos autem ipse L. Gellius et Cn. Lentulus, duo censores, clarissimi viri, sapientissimique homines, furti et captarum pecuniarum nomine, notaverunt: ii non modo in senatum redierunt, sed etiam illarum ipsarum rerum iudiciis absoluti sunt.

XLIII. Neminem voluerunt maiores nostri non modo de existimatione cuiusquam, sed ne pecuniaria quidem de re minima esse iudicem, nisi qui inter adversarios convenisset. Quapropter in omnibus legibus, quibus exceptum est, de quibus causis aut magistratum capere non liceat, aut iudicem legi, aut alterum accusare, haec ignominiae causa praetermissa est.

Timoris enim causam, non vitae poenam in illa potestate esse voluerunt. 121. Itaque non solum, iudices, illud ostendam, quod iam videtis, populi Romani suffragiis saepenumero censorias subscriptiones esse deletas, verum etiam iudiciis eorum, qui iurati statuere maiore cum religione et diligentia debuerunt. Primum iudices, senatores equitesque Romani, in compluribus iam reis, quos contra leges pecunias cepisse subscriptum est, suae potius religioni, quam censorum opinioni, paruerunt. Deinde praetores urbani, qui iurati debent optimum quemque in selectos iudices referre, nunquam sibi ad eam rem censoriam ignominiam impedimento esse oportere duxerunt. 122. Censores denique ipsi saepe numero superiorum censorum iudiciis (si ista iudicia appellari vultis) non steterunt. Atque etiam ipsi inter se censores sua iudicia tanti esse arbitrantur, ut alter alterius iudicium non modo reprehendat, sed etiam rescindat: ut alter de senatu movere velit, alter retineat, et ordine amplissimo dignum existimet: ut alter in aerarios referri, aut tribu moveri iubeat, alter vetet. Quare qui vobis in mentem venit, haec appellare iudicia, quae a populo Romano rescindi, ab iuratis iudicibus repudiari, a magistratibus negligi, ab iis, qui eandem potestatem adepti sunt, commutari, inter collegas discrepare videatis?

XLIV. 123. Quae quum ita sint, videamus, quid tandem censores de illo iudicio corrupto iudicasse dicantur. Ac primum illud statuamus: utrum, quia censores subscripserint, ita sit: an, quia ita fuerit, illi subscripserint. Si ideo, quia subscripserint: videte, quid agatis, ne in unumquemque nostrum censoribus in posterum potestatem regiam permittatis: ne subscriptio censoria non minus calamitatis civibus, quam illa

acerbissima proscriptio possit afferre: ne censorium stilum, cuius mucronem multis remediis maiores nostri retuderunt, aeque posthac atque illum dictatorium gladium pertimescamus. **124.** Sin autem, quod subscriptum est, quia verum est, idcirco grave debet esse: hoc quaeramus, verum sit, an falsum: removeantur auctoritates censoriae: tollatur id ex causa, quod in causa non est: doce, quam pecuniam Cluentius dederit, unde dederit, quemadmodum dederit: unum denique aliquod a Cluentio profectae pecuniae vestigium ostende. Vince deinde, virum bonum fuisse Oppianicum, homine integrum: nihil de illo unquam secus esse existimatum: nihil denique praeiudicatum. Tum auctoritatem censorum amplexato: tum illorum iudicium cum re coniunctum esse defendito. **125.** Dum vero eum fuisse Oppianicum constabit, qui tabulas publicas municipii manu sua corrupisse iudicatus sit: qui testamentum interleverit: qui, supposita persona, falsum testamentum obsignandum curarit: qui eum, cuius nomine id obsignatum est, interfecerit: qui avunculum filii sui in servitute ac vinculis necarit: qui municipes suos proscribendos occidendosque curarit: qui eius uxorem, quem occiderat, in matrimonium duxerit: qui pecuniam pro abortione dederit: qui socrum, qui uxores, qui uno tempore fratris uxorem, speratosque liberos, fratremque ipsum, qui denique suos liberos interfecerit: qui, quum venenum privigno suo quaereret, manifesto sit deprehensus: cuius ministris consciisque damnatis, ipse adductus in iudicium pecuniam iudici dederit ad sententias iudicum corrumpendas: dum haec, inquam, de Oppianico constabunt, nec ullo argumento Cluentianae pecuniae crimen tenebitur: quid est, quod te ista censoria sive voluntas sive opinio fuit, adiuvare, aut hunc innocentem opprimere posse videatur?

XLV. **126.** Quid igitur censores secuti sunt? Ne ipsi quidem, ut gravissime dicam, quidquam aliud dicent, praeter sermonem atque famam. Nihil se testibus, nihil tabulis, nihil gravi aliquo argumento comperisse, nihil denique, causa cognita, statuisse dicent. Quod si ita fecissent: tamen id non ita fixum esse deberet, ut convelli non liceret. Non utar exemplorum copia, quae summa est: non rem veterem, non hominem potentem aliquem, aut gratiosum proferam. Nuper hominem tenuem, scribam aedilicium, D. Matrinium, quum defendissem apud M. Iunium, Q. Publicium, praetores, et M. Plaetorium, C. Flaminium, aediles curules: persuasi, ut scribam iurati legerent eum, quem iidem isti censores aerarium reliquissent. Quum enim in homine nulla culpa inveniretur: quid ille meruisset, non quid de eo statutum esset, quaerendum esse duxerunt. **127.** Nam haec quidem, quae de iudicio corrupto subscripserunt, quis est, qui ab illis satis cognita et diligenter iudicata arbitretur? In M' Aquillium et in Ti. Guttam video esse subscriptum. Quid est hoc? duos esse corruptos solos pecunia dicant? ceteri videlicet gratis condemnarunt? Non est igitur circumventus, non est oppressus pecunia, non, ut illae Quintianae conciones habebantur, omnes, qui Oppianicum condemnarunt, in culpa sunt ac suspicione ponendi. Duos solos video auctoritate censorum affines ei turpitudini iudicari. Aut illud afferant, aliquid esse, quod de iis duobus habuerint compertum, de ceteris comperisse.

XLVI. **128.** Nam illud quidem minime probandum est, ad notationes auctoritatemque censoriam exemplum illos a consuetudine militari transtulisse. Statuerunt enim ita maiores nostri, ut, si a multis esset flagitium rei militaris admissum, sortitione in

quosdam animadverteretur: ut metus videlicet ad omnes, poena ad paucos perveniret. Quod idem facere censores in delectu dignitatis, et in iudicio civium, et in animadversione vitiorum, qui convenit? Nam miles, qui locum non tenuit, qui hostium impetum vimque pertimuit, potest idem postea et miles esse melior, et vir bonus, et civis utilis. Quare, ne in bello propter hostium metum delinqueret, amplior ei mortis et supplicii metus est a maioribus constitutus: ne autem nimium multi poenam capitis subirent, idcirco illa sortitio comparata est. 129. Hoc tu idem facies, censor, in senatu legendo? Si erunt plures, qui ob innocentem condemnandum pecuniam acceperint, tu non animadvertes in omnes, sed carpes, ut velis, et paucos ex multis ad ignominiam sortiere? Habebit igitur, te sciente et vidente, curia senatorem, populus Romanus iudicem, res publica civem sine ignominia quemquam, qui ad perniciem innocentis, fidem suam et religionem pecunia commutarit? et, qui pretio adductus eripuerit patriam, fortunas, liberos civi innocenti, is censoriae severitatis nota non inuretur? Tu es praefectus moribus, tu magister veteris disciplinae et severitatis, si aut retines quemquam sciens in senatu, scelere tanto contaminatum, aut statuis, qui in eadem culpa sit, non eadem poena affici convenire? Aut quam conditionem supplicii maiores in bello timiditati militis propositam esse voluerunt, eandem tu in pace constitues improbitati senatoris? Quod si hoc exemplum ex re militari ad animadversionem censoriam transferendum fuit; sortitione id ipsum factum esse oportuit. Sin autem sortiri ad poenam, atque hominum delictum fortunae iudicio committere minime censorium est; certe in multorum peccato carpi paucos ad ignominiam et turpitudinem non oportet.

XLVII. 130. Verum omnes intelligimus, in istis subscriptionibus ventum quendam popularem esse quaesitum. Iactata res erat in concione a tribuno seditioso: incognita causa, probatum erat illud multitudini; nemini licitum est contra dicere: nemo denique, ut defenderet contrariam partem, laborabat. In invidiam porro magnam illa iudicia venerant. Etenim paucis postea mensibus alia vehemens erat in iudiciis ex notatione tabellarum invidia versata. Praetermitti a censoribus, et negligi macula iudiciorum posse non videbatur. Homines, quos ceteris vitiis atque omni dedecore infames videbant, eos hac quoque subscriptione notare voluerunt, et eo magis, quod illo ipso tempore, illis censoribus, erant iudicia cum equestri ordine communicata; ut viderentur per hominum idoneorum ignominiam sua auctoritate illa iudicia reprehendisse. 131. Quod si hanc apud eosdem ipsos censores mihi aut alii causam agere licuisset: hominibus tali prudentia praeditis certe probavissem (res enim indicat) nihil ipsos habuisse cogniti, nihil comperti: ex tota ista subscriptione rumorem quendam et plausum popularem esse quaesitum. Nam in P. Popillium, qui Oppianicum condemnarat, subscripsit L. Gellius, "quod is pecuniam accepisset, quo innocentem condemnaret." Iam id ipsum quantae divinationis est, scire, innocentem fuisse reum, quem fortasse nunquam viderat, quum homines sapientissimi, iudices, ut nihil dicam de iis, qui condemnarunt, causa cognita, sibi dixerint non liquere?

132. Verum esto: condemnat Popillium Gellius: iudicat, accepisse a Cluentio pecuniam. Negat hoc Lentulus. Nam Popillium, quod erat libertini filius, in senatum non legit: locum quidem senatorium ludis et cetera ornamenta relinquit, et eum omni

ignominia liberat. Quod quum facit, iudicat, eius sententia gratis esse Oppianicum condemnatum. Et eundem Popillium postea Lentulus in ambitus iudicio pro testimonio diligentissime laudat. Quare, si neque L. Gellii iudicio stetit Lentulus, neque Lentuli existimatione contentus fuit Gellius: et, si uterque censor censoris opinione standum non putavit: quid est, quamobrem quisquam nostrum censorias subscriptiones omnes fixas et in perpetuum ratas putet esse oportere?

XLVIII. 133. At in ipsum Habitum animadverterunt.—Nullam quidem ob turpitudinem, nullum ob totius vitae, non dicam vitium, sed erratum. Neque enim hoc homine sanctior, neque probior, neque in omnibus officiis retinendis diligentior esse quisquam potest: neque illi aliter dicunt: sed eandem illam famam iudicii corrupti secuti sunt. Neque ipsi secus existimant, quam nos existimari volumus, de huius pudore, integritate, virtute: sed putarunt praetermitti accusatorem non potuisse, quum animadversum esset in iudices. Qua de re tota si unum factum ex omni antiquitate protulero, plura non dicam. 134. Non enim mihi exemplum summi et clarissimi viri. P. Africani praetereundum videtur: qui quum esset censor, et in equitum censu C. Licinius Sacerdos prodiisset; clara voce, ut omnis concio audire posset, dixit, se scire, illum verbis conceptis peierasse; si qui contra dicere vellet, usurum esse eum suo testimonio. Deinde quum contra nemo diceret, iussit equum traducere. Itaque is, cuius arbitrio et populus Romanus et exterae gentes contentae esse consuerant, ipse sua scientia ad ignominiam alterius contentus non fuit. Quod si hoc Habito facere licuisset, facile, illis ipsis iudicibus et falsae suspicioni et invidiae populariter excitatae restitisset.

135. Unum etiam est, quod me maxime conturbat, cui loco respondere posse vix videor, quod elogium recitasti de testamento Cn. Egnatii, patris, hominis honestissimi videlicet, et sapientissimi: idcirco se exheredasse filium, quod is ob Oppianici damnationem pecuniam accepisset. De cuius hominis levitate et inconstantia plura non dicam. Hoc testamentum ipsum, quod recitas, eiusmodi est, ut ille, quum eum filium exheredaret, quem oderat, ei filio coheredes homines alienissimos coniungeret, quem diligebat. Sed tu, Atti, consideres, censeo, diligenter, utrum censorum iudicium grave velis esse, an Egnatii. Si Egnatii: leve est, quod censores de ceteris subscripserunt; ipsum enim Cn. Egnatium, quem tu gravem esse vis, ex senatu eiecerunt. Sin autem censorum: hunc Egnatium, quem pater censoria subscriptione exheredavit, censores in senatu, quum patrem eiicerent, retinuerunt.

XLIX. 136. At enim senatus universus iudicavit, illud corruptum esse iudicium.—Quomodo?—Suscepit causam.—An potuit rem delatam eiusmodi repudiare? quum tribunus plebis, populo concitato, rem paene ad manus revocasset: quum vir optimus, et homo innocentissimus, pecunia circumventus esse diceretur: quum invidia flagraret ordo senatorius, potuit nihil decerni? potuit illa concitatio multitudinis sine summo periculo rei publicae repudiari? At quid est decretum? quam iuste? quam sapienter? quam diligenter? SI QUI SUNT, QUORUM OPERA FACTUM SIT, UT IUDICIUM PUBLICUM CORRUMPERETUR. Utrum videtur senatus id factum iudicare: an, si factum sit, moleste graviterque ferre? Si ipse A. Cluentius sententiam de iudiciis rogaretur, aliam non diceret, atque ii dixerunt, quorum sententiis Cluentium condemnatum

esse dicitis. 137. Sed quaero a vobis, num istam legem ex isto senatusconsulto L. Lucullus consul, homo sapientissimus, tulerit? num anno post M. Lucullus et C. Cassius, in quos, tum consules designatos, idem illud senatus decreverat? Non tulerunt: et quod tu Habiti pecunia factum esse arguis, neque id vel tenuissima suspicione confirmas, factum est primo illorum aequitate et sapientia consulum, ut id, quod senatus decreverat, ad illud invidiae praesens incendium restinguendum, id postea referendum ad populum non arbitrarentur. Ipse deinde populus Romanus, qui L. Quintii tribuni plebis fictis querimoniis antea concitatus, rem illam et rogationem flagitarat, idem C. Iunii filii, pueri parvuli, lacrymis commotus, maximo clamore et concursu totam illam legem et quaestionem repudiavit. 138. Ex quo intelligi potuit id, quod saepe dictum est: ut mare, quod sua natura tranquillum sit, ventorum vi agitari atque turbari; sic et populum Romanum sua sponte esse placatum, hominum seditiosorum vocibus, ut violentissimis tempestatibus, concitari.

L. Est etiam reliqua permagna auctoritas, quam ego turpiter paene praeterii. Mea enim esse dicitur. Recitavit ex oratione, nescio qua, Attius, quam meam esse dicebat, cohortationem quandam iudicum ad honeste iudicandum, et commemorationem tum aliorum iudiciorum, quae probata non essent, tum illius ipsius iudicii Iuniani: proinde quasi ego non ab initio huius defensionis dixerim, invidiosum illud fuisse iudicium: aut, quum de infamia iudiciorum disputarem, potuerim illud, quod tam populare esset, in illo tempore praeterire. 139. Ego vero, si quid eiusmodi dixi, neque cognitum commemoravi, neque pro testimonio dixi: et illa oratio potius temporis

mei, quam iudicii et auctoritatis fuit. Quum enim accusarem, et mihi initio proposuissem, ut animos et populi Romani et iudicum commoverem: quumque omnes offensiones iudiciorum non ex mea opinione, sed ex hominum rumore proferrem: istam rem, quae tam populariter esset agitata, praeterire non potui. Sed errat vehementer, si quis in orationibus nostris, quas in iudiciis habuimus, auctoritates nostras consignatas se habere arbitratur. Omnes enim illae orationes causarum ac temporum sunt, non hominum ipsorum aut patronorum. Nam, si causae ipsae pro se loqui possent, nemo adhiberet oratorem. Nunc adhibemur, ut ea dicamus, non quae nostra auctoritate constituantur, sed quae ex re ipsa causaque ducantur. 140. Hominem ingeniosum, M. Antonium, aiunt solitum esse dicere, *idcirco se nullam unquam orationem scripsisse, ut, si quid aliquando non opus esset ab se esse dictum, posset negare dixisse:* proinde quasi, si quid a nobis dictum, aut actum sit, id nisi literis mandaverimus, hominum memoria non comprehendatur.

LI. Ego vero in isto genere libentius quum multorum, tum hominis eloquentissimi et sapientissimi, L. Crassi, auctoritatem sequor, qui quum Cn. Plancum defenderet, accusante M. Bruto, homine in dicendo vehementi et callido, quum Brutus, duobus recitatoribus constitutis, ex duabus eius orationibus capita alterna, inter se contraria, recitanda curasset: quod in dissuasione rogationis eius, quae contra coloniam Narbonensem ferebatur, quantum potest, de auctoritate senatus detrahit: in suasione legis Serviliae summis ornat senatum laudibus: et multa in equites Romanos quum ex ea oratione asperius dicta recitasset, quo animi illorum iudicum in Crassum incenderentur: aliquantum esse commotus dicitur. 141. Itaque in

respondendo primum exposuit utriusque rationem temporis, ut oratio ex re et causa habita videretur: deinde, ut intelligere posset Brutus, quem hominem, et non solum qua eloquentia, verum etiam quo lepore et quibus facetiis praeditum lacessisset: tres et ipse excitavit recitatores cum singulis libellis, quos M. Brutus, pater illius accusatoris, de iure civili reliquit. Eorum initia quum recitarentur, ea, quae vobis nota esse arbitror: FORTE EVENIT, UT RURI IN PRIVERNATI ESSEMUS, EGO ET BRUTUS FILIUS: fundum Privernatem flagitabat. IN ALBANO ERAMUS EGO ET BRUTUS FILIUS: Albanum poscebat. IN TIBURTI FORTE QUUM ASSEDISSEMUS, EGO ET BRUTUS FILIUS; Tiburtem fundum requirebat: "Brutum autem, hominem sapientem, quod filii nequitiam videret, quae praedia ei relinqueret, testificari dicebat voluisse. Quod si potuisset honeste scribere, se in balneis cum id aetatis filio fuisse, non praeterisset: eas se tamen ab eo balneas non ex libris patris, sed ex tabulis et ex censu quaerere." Crassus tum ita Brutum ultus est, ut illum recitationis suae poeniteret. Moleste enim fortasse tulerat, se in iis orationibus reprehensum, quas de re publica habuisset: in quibus forsitan magis requiratur constantia. 142. Ego autem illa recitata esse non moleste fero. Neque enim ab illo tempore, quod tum erat, neque ab ea causa, quae tum agebatur, aliena fuerunt: neque mihi quidquam oneris suscepi, quum ista dixi, quo minus honeste hanc causam et libere possem defendere. Quod si velim confiteri, me causam A. Cluentii nunc cognosse, antea fuisse in illa opinione populari: quis tandem id possit reprehendere? praesertim, iudices, quum a vobis quoque ipsis hoc impetrari sit aequissimum, quod ego et ab initio petivi, et nunc peto, ut, si quam

huc graviorem de illo iudicio opinionem attulistis, hanc, causa perspecta atque omni veritate cognita, deponatis.

LII. 143. Nunc, quoniam ad omnia, quae abs te dicta sunt, T. Atti, de Oppianici damnatione respondi; confiteare necesse est, te opinionem multum fefellisse, quod existimaris, me causam A. Cluentii non facto eius, sed lege defensurum. Nam hoc persaepe dixisti, tibi sic renuntiari, me habere in animo causam hanc praesidio legis defendere. Itane est? ab amicis videlicet imprudentes prodimur? et est nescio quis de iis, quos amicos nobis arbitramur, qui nostra consilia ad adversarios deferat? Quisnam tibi hoc renuntiavit? quis tam improbus fuit? Cui ego autem narravi? Nemo, ut opinor, in culpa est: sed nimirum tibi istuc lex ipsa renuntiavit. Sed num tibi ita defendisse videor, ut tota in causa mentionem ullam fecerim legis? num secus hanc causam defendisse, ac si lege Habitus teneretur? Certe, ut hominem confirmare oportet, nullus est locus a me purgandi istius invidiosi criminis praetermissus. 144. Quid ergo est? quaeret fortasse quispiam, displiceatne mihi, legum praesidio capitis periculum propulsare? Mihi vero, iudices, non displicet: sed utor instituto meo. In hominis honesti prudentisque iudicio, non solum meo consilio uti consuevi, sed multum etiam eius, quem defendo, et consilio et voluntati obtempero. Nam, ut haec ad me causa delata est, qui leges eas, ad quas adhibemur, et in quibus versamur, nosse deberem: dixi Habito statim, de eo, QUI COISSET, QUO QUIS CONDEMNARETUR, illum esse liberum: teneri autem nostrum ordinem. Atque ille me orare et obsecrare coepit, ne sese lege defenderem. Quum ego, quae mihi viderentur, dicerem: traduxit me ad

suam sententiam. Affirmabat enim lacrymans, non se cupidiorem esse civitatis retinendae, quum existimationis. 145. Morem homini gessi: et tamen idcirco feci, (neque enim id semper facere debemus,) quod videbam, per se ipsam causam sine lege copiosissime posse defendi. Videbam, in hac defensione, qua iam sum usus, plus dignitatis: in illa, qua me hic uti noluit, minus laboris futurum.

LIII. Quodsi nihil aliud fuisset actum, nisi ut hanc causam obtinerem: lege recitata, perorassem: neque me illa oratio commoveret, quod ait Attius indignum esse facinus, si senator iudicio quempiam circumvenerit, legibus eum teneri: si eques Romanus hoc idem fecerit, non teneri. 146. Ut tibi concedam, hoc indignum esse, (quod cuiusmodi sit, iam videro;) tu mihi concedas necesse est, multo esse indignius, in ea civitate, quae legibus contineatur, discedi a legibus. Hoc enim vinculum est huius dignitatis, qua fruimur in re publica, hoc fundamentum libertatis, hic fons aequitatis. Mens, et animus, et consilium, et sententia civitatis posita est in legibus. Ut corpora nostra sine mente, sic civitas sine lege, suis partibus, ut nervis ac sanguine et membris, uti non potest. Legum ministri, magistratus: legum interpretes, iudices: legum denique idcirco omnes servi sumus, ut liberi esse possimus. 147. Quid est, Q. Naso, cur tu in isto loco sedeas? quae vis est, qua abs te hi iudices, tali dignitate praediti, coërceantur? Vos autem, iudices, quamobrem ex tanta multitudine civium tam pauci de hominum fortunis sententiam fertis? quo iure Attius, quae voluit, dixit? cur mihi tamdiu potestas dicendi datur? quid sibi autem illi scribae, quid lictores, quid ceteri, quos apparere huic quaestioni video, volunt? Opinor haec omnia lege fieri,

totumque hoc iudicium (ut ante dixi) quasi mente quadam regi legis et administrari. Quid ergo est? haec quaestio sola ita gubernatur? quid M. Plaetorii et C. Flaminii inter sicarios? quid C. Orchinii peculatus? quid mea de pecuniis repetundis? quid C. Aquillii, apud quem nunc de ambitu causa dicitur? quid reliquae quaestiones? Circumspicite omnes rei publicae partes: omnia legum imperio et praescripto fieri videbitis. 148. Si qui apud me te, T. Atti, reum velit facere: clames, te lege pecuniarum repetundarum non teneri. Neque haec tua recusatio confessio sit captae pecuniae; sed laboris, sed periculi non legitimi declinatio.

LIV. Nunc, quid agatur, et quid abs te iuris constituatur, vide. Iubet lex ea, qua lege haec quaestio constituta est, iudicem quaestionis, hoc est, Q. Voconium, cum iis iudicibus, qui ei obvenerint, (vos appellat, iudices,) quaerere de veneno. In quem quaerere? Infinitum est. QUICUNQUE FECERIT, VENDIDERIT, EMERIT, HABUERIT, DEDERIT. Quid eadem lex statim adiungit? Recita. DEQUE EIUS CAPITE QUÆRITO. Cuius? qui coierit? convenerit? Non ita est. Quid ergo est? dic. QUI TRIBUNUS MILITUM LEGIONIBUS QUATTUOR PRIMIS, QUIVE QUÆSTOR, TRIBUNUS PLEBIS. Deinceps omnes magistratus nominavit. QUIVE IN SENATU SENTENTIAM DIXIT, DIXERIT. Quid tum? QUI EORUM COIIT, COIERIT, CONVENIT, CONVENERIT, QUO QUIS IUDICIO PUBLICO CONDEMNARETUR. *Qui eorum.* — Quorum? Videlicet, qui supra scripti sunt. Quid interest, utro modo scriptum sit? Etsi est apertum, tamen ipsa lex docet. Ubi enim omnes mortales alligat, ita loquitur: QUI VENENUM MALUM FECIT, FECERIT. Omnes viri, mulieres, liberi, servi in iudicium vocantur. Si item de coitione voluisset:

adiunxisset, QUIVE COIERIT. Nunc ita est, DEQUE EIUS CAPITE QUÆRITO, QUI MAGISTRATUM HABUERIT, QUIVE IN SENATU SENTENTIAM DIXERIT: QUI EORUM COIIT, COIERIT. 149. Num is est Cluentius? Certe non est. Quis ergo est Cluentius? Qui tamen defendi causam suam lege nolit. Itaque abiicio legem: morem Cluentio gero: tibi tamen, Atti, pauca, quae ab huius causa seiuncta sunt, respondebo. Est enim quiddam in hac causa, quod Cluentius ad se; est aliquid, quod ego ad me putem pertinere. Hic sua putat interesse, se re ipsa, et gesto negotio, non lege defendi: ego autem mea existimo interesse, me nulla in disputatione ab Attio videri esse superatum. Non enim mihi haec causa sola dicenda est: omnibus hic labor meus propositus est, quicunque hac facultate defensionis contenti esse possunt. Nolo, quemquam eorum, qui adsunt, existimare, me, quae de lege ab Attio dicta sunt, si reticuerim, comprobare. Quamobrem, Cluenti, de te tibi obsequor: neque ego legem recito, neque hoc loco pro te dico; sed ea, quae a me desiderari arbitror, non relinquam.

LV. 150. Iniquum tibi videtur, Atti, esse, non iisdem legibus omnes teneri. Primum (ut id iniquissimum esse confitear) huiusmodi est, ut commutatis eis opus sit legibus, non ut iis, quae sunt, non pareamus. Deinde quis unquam hoc senator accusavit, ut, quum altiorem gradum dignitatis, beneficio populi Romani esset consecutus, eo se putaret durioribus legum conditionibus uti non oportere? Quam multa sunt commoda, quibus caremus: quam multa molesta et difficilia, quae subimus! Atque haec omnia tantum honoris et amplitudinis commodo compensantur. Converte nunc ad equestrem ordinem, atque in ceteros ordines

easdem vitae conditiones: non perferent. Putant enim, minus multos sibi laqueos legum et conditionum ac iudiciorum propositos esse oportere, qui summum locum civitatis aut non potuerunt adscendere, aut non petiverunt. 151. Atque, ut omittam leges alias omnes, quibus nos tenemur, ceteri autem sunt ordines liberati: hanc ipsam legem, NE QUIS IUDICIO CIRCUMVENIRETUR, C. Gracchus tulit: eam legem pro plebe, non in plebem tulit. Postea L. Sulla, homo a populi causa remotissimus, tamen, quum eius rei quaestionem hac ipsa lege constitueret, qua vos hoc tempore iudicatis, populum Romanum, quem ab hoc genere liberum acceperat, alligare novo quaestionis genere ausus non est. Quod si fieri posse existimasset: pro illo odio, quod habuit in equestrem ordinem, nihil fecisset libentius, quam omnem illam acerbitatem proscriptionis suae, qua est usus in veteres iudices, in hanc unam quaestionem contulisset. 152. Nec nunc quidquam agitur, (mihi credite, iudices, et prospicite id, quod providendum est;) nisi ut equester ordo in huiusce legis periculum includatur. Neque hoc agitur ab omnibus, sed a paucis. Nam ii senatores, qui se facile tuentur integritate et innocentia, quales (ut vere dicam) vos estis, et ceteri, qui sine cupiditate vixerunt, equites ordini senatorio dignitate proximos concordia coniunctissimos esse cupiunt: sed ii, qui se volunt posse omnia, neque praeterea quidquam esse, aut in homine ullo aut in ordine, hoc uno metu se putant equites Romanos in potestatem suam redacturos, si constitutum est, ut de iis, qui rem iudicarent, huiuscemodi iudicia fieri possint. Vident enim auctoritatem huius ordinis confirmari: vident iudicia comprobari: hoc metu proposito, evellere se aculeum serveritatis

vestrae posse confidunt. 153. Quis enim de homine audeat, paullo maioribus opibus praedito, vere et fortiter iudicare; quum videat, sibi de eo, quod coierit, aut consenserit, causam esse dicendam?

LVI. O viros fortes, equites Romanos, qui homini clarissimo ac potentissimo, M. Druso, tribuno plebis, restiterunt, quum ille nihil aliud ageret cum illa cuncta, quae tum erat, nobilitate, nisi uti, qui rem iudicassent, huiuscemodi quaestionibus in iudicium vocarentur! Tunc C. Flavius Pusio, Cn. Titinius, C. Maecenas, illa robora populi Romani, ceterique huiuscemodi ordinis, non fecerunt idem, quod nunc Cluentius, ut aliquid culpae suscipere se putarent recusando: sed apertissime repugnarunt, quum haec recusarent, et palam fortissime atque honestissime dicerent, se potuisse iudicio populi Romani in amplissimum locum pervenire, si sua studia ad honores petendos conferre voluissent; sese vidisse, in ea vita qualis splendor inesset, quanta ornamenta, quae dignitas: quae se non contempsisse, sed ordine suo, patrumque suorum, contentos fuisse: et vitam illam tranquillam et quietam, remotam a procellis invidiarum, et huiuscemodi iudiciorum amfractu, sequi maluisse. 154. Aut sibi ad honores petendos aetatem integram restitui oportere: aut, quoniam id non posset, eam conditionem vitae, quam secuti, petitionem reliquissent, manere: iniquum esse, eos, qui honorum ornamenta, propter periculorum multitudinem, praetermisissent, populi benefactis esse privatos, iudiciorum novorum periculis non carere: senatorem hoc queri non posse, propterea quod ea conditione proposita petere coepisset: quodque permulta essent ornamenta, quibus eam mitigare molestiam posset: locus, auctoritas, domi splendor, apud exteras nationes nomen

et gratia, toga praetexta, sella curulis, [insignia,] fasces, exercitus, imperia, provinciae: quibus in rebus quum summa recte factis maiores nostri praemia, tum plura peccatis pericula proposita esse voluerunt. Illi non hoc recusabant, ea ne lege accusarentur, qua nunc Habitus accusatur, quae tunc erat Sempronia, nunc est Cornelia: intelligebant enim, ea lege equestrem ordinem non teneri: sed ne nova lege alligarentur, laborabant. 155. Habitus ne hoc quidem unquam recusavit, quo minus vel ea lege rationem vitae suae redderet, qua non teneretur. Quae si vobis conditio placet: omnes id agamus, ut haec quam primum in omnes ordines quaestio perferatur.

LVII. Interea quidem, per deos immortales! quoniam omnia commoda nostra, iura, libertatem, salutem denique legibus obtinemus, a legibus non recedamus: simul et illud quam sit iniquum cogitemus, populum Romanum aliud nunc agere: vobis rem publicam et fortunas suas commisisse: ipsum sine cura esse: non metuere, ne lege ea, quam nunquam ipse iusserit, et quaestione, qua se solutum liberumque esse arbitretur, per paucos iudices adstringatur. 156. Agit enim sic causam T. Attius, adolescens bonus et disertus: omnes cives legibus teneri omnibus: vos attenditis et auditis silentio, sicut facere debetis. A. Cluentius, eques Romanus, causam dicit ea lege, qua lege senatores, et ii, qui magistratum habuerunt, soli tenentur: mihi per eum, recusare, et in arce legis praesidia constituere defensionis meae, non licet. Si obtinuerit causam Cluentius, (sicuti vestra aequitate nixi confidimus,) omnes existimabunt, id quod erit, obtinuisse propter innocentiam, quoniam ita defensus sit: in lege autem, quam attingere noluerit, praesidii

nihil fuisse. 157. Hic nunc est quiddam, quod ad me pertineat, de quo ante dixi, quod ego populo Romano praestare debeam, quoniam is meae vitae status est, ut omnis mihi cura atque opera posita sit in hominum periculis defendendis. Video, quanta et quam periculosa et quam infinita quaestio tentetur ab accusatoribus, quum eam legem, quae in nostrum ordinem scripta sit, in populum Romanum transferre conentur. Qua in lege est, QUI COIERIT: quod quam late pateat, videtis; CONVENERIT: aeque infinitum et incertum est; CONSENSERIT: hoc vero quum incertum et infinitum, tum obscurum et occultum est; FALSUMVE TESTIMONIUM DIXERIT: quis de plebe Romana testimonium dixit unquam, cui non hoc periculum, T. Attio auctore, paratum esse videatis? Nam dicturum quidem certe, si hoc iudicium plebi Romanae propositum sit, neminem unquam esse confirmo. 158. Sed hoc polliceor omnibus, si cui forte hac lege negotium facessetur, qui lege non teneatur, si is uti me defensore voluerit, me eius causam legis praesidio defensurum: et vel his iudicibus, vel eorum similibus, facile probaturum, et omni me defensione usurum esse legis: qua nunc ut utar, ab eo, cuius voluntati mihi obtemperandum est, non conceditur.

LVIII. Non enim debeo dubitare, iudices, quin, si qua ad vos causa huiusmodi delata sit eius, qui lege non teneatur, etiam si is invidiosus, aut multis offensus esse videatur, etiam si eum oderitis, etiam si inviti absoluturi sitis, tamen absolvatis: et religioni potius vestrae, quam odio pareatis. 159. Est enim sapientis iudicis, cogitare, tantum sibi a populo Romano esse permissum, quantum commissum sit et creditum: et non solum sibi potestatem datam,

verum etiam fidem habitam esse meminisse: posse, quem oderit, absolvere: quem non oderit, condemnare: et semper, non quid ipse velit, sed quid lex et religio cogat, cogitare: animadvertere, qua lege reus citetur, de quo reo cognoscat, quae res in quaestione versetur. Quum haec sunt videnda, tum vero illud est hominis magni, iudices, atque sapientis, quum illam iudicandi causa tabellam sumpserit, non se putare esse solum, neque sibi, quodcunque concupierit, licere; sed habere in consilio legem, religionem, aequitatem, fidem: libidinem autem, odium, invidiam, metum, cupiditatesque omnes amovere: maximique aestimare conscientiam mentis suae, quam ab diis immortalibus accepimus, quae a nobis divelli non potest: quae si optimorum consiliorum atque factorum testis in omni vita nobis erit, sine ullo metu, et summa cum honestate vivemus. 160. Haec si T. Attius aut cognovisset, aut cogitasset: profecto ne conatus quidem esset dicere, id quod multis verbis egit, iudicem, quod ei videatur, statuere, et non devinctum legibus esse oportere. Quibus de rebus mihi pro Cluentii voluntate, nimium, pro rei publicae dignitate, parum, pro vestra prudentia satis dixisse videor. Reliqua perpauca sunt, quae, quia vestrae quaestionis erant, idcirco illi statuerunt sibi fingenda esse, et proferenda, ne omnium turpissimi reperirentur, si in iudicium nihil, praeter invidiam, attulissent.

LIX. Atque, ut existimetis, necessario me de his rebus, de quibus iam dixerim, pluribus egisse verbis, attendite reliqua. Profecto intelligetis, ea, quae paucis demonstrari potuerunt, brevissime esse defensa.

161. Cn. Decio Samniti, ei, qui proscriptus est, iniuriam in calamitate eius ab huius familia factam

esse dixistis. Ab nullo ille liberalius, quam a Cluentio, tractatus est. Huius illum opes in rebus eius incommodissimis sublevarunt. Atque hoc quum ipse, tum omnes eius amici necessariique cognorunt. "Ancarii et Paceni pastoribus huius villicos vim et manus attulisse." Quum quaedam in collibus (ut solet) controversia pastorum esset orta: Habiti villici rem domini et privatam possessionem defenderunt. Quum esset expostulatio facta, causa illis demonstrata, sine iudicio controversiaque discessum est. 162. "P. Ælii testamento propinquus exheredatus quum esset, heres hic alienior institutus est." P. Ælius Habiti merito fecit: neque hic in testamento faciendo interfuit: idque testamentum ab huius inimico Oppianico est obsignatum. "Florio legatum ex testamento infitiatum esse." Non est ita; sed quum IIS xxx scripta essent pro IIS ccc, neque ei satis cautum videretur: voluit eum aliquid acceptum referre liberalitati suae. Primo deberi negavit: post sine controversia solvit. "Caelii cuiusdam Samnitis uxorem post bellum ab hoc esse repetitam." Mulierem quum emisset de sectoribus, quo tempore eam primum liberam esse audivit, sine iudicio reddidit Caelio. 163. "Ennium esse quendam, cuius bona teneat Habitus." Est hic Ennius egens quidam, calumniator, mercenarius Oppianici, qui permultos annos quievit: deinde aliquando cum servo Habiti furti egit: nuper ab ipso Habito petere coepit. Hic illo privato iudicio, (mihi credite,) vobis iisdem fortasse patronis, calumniam non effugiet. Atque etiam, ut nobis renuntiatur, hominem multorum hospitum, A. Binnium quendam, coponem de via Latina, subornatis: qui sibi a Cluentio, servisque eius, in taberna sua manus allatas

esse dicat. Quo de homine nihil etiam nunc dicere nobis est necesse. Si invitaverit, id quod solet, sic hominem accipiemus, ut moleste ferat se de via decessisse. 164. Habetis, iudices, quae in totam vitam de moribus A. Cluentii, quem illi invidiosum reum volunt esse, annos octo meditati accusatores collegerunt. Quam levia genere ipso! quam falsa re! quam brevia responsu!

LX. Cognoscite nunc id, quod ad vestrum iusiurandum pertinet, quod vestri iudicii est, quod vobis oneris imposuit ea lex, qua coacti huc convenistis, de criminibus veneni: ut omnes intelligant, quam paucis verbis haec causa perorari potuerit, et quam multa a me dicta sint, quae ad huius voluntatem maxime, ad vestrum iudicium minime pertinerent.

165. Obiectum est, C. Vibium Capacem ab hoc A. Cluentio veneno esse sublatum. Opportune adest homo summa fide et omne virtute praeditus, L. Plaetorius, senator, qui illius Capacis hospes fuit et familiaris. Apud hunc ille Romae habitavit, apud hunc aegrotavit, huius domi est mortuus. "At heres est Cluentius." Intestatum dico esse mortuum, possessionemque eius bonorum, praetoris edicto, huic, illius sororis filio, adolescenti pudentissimo, et in primis honesto, equiti Romano datam, Numerio Cluentio, quem videtis.

166. Alterum veneficii crimen, Oppianico huic adolescenti, quum eius in nuptiis, more Larinatium, multitudo hominum pranderet, venenum Habiti consilio paratum; id quum daretur in mulso, Balbutium quendam, eius familiarem, intercepisse, bibisse, statimque esse mortuum. Hoc ego si sic agerem, tamquam mihi crimen esset diluendum, haec pluribus verbis dicerem, quae nunc paucis percurrit

oratio mea. 167. Quid unquam Habitus in se admisit, ut hoc tantum ab eo facinus non abhorrere videatur? quid autem magno opere Oppianicum metuebat, quum ille verbum omnino in hac ipsa causa facere nullum potuerit: huic autem accusatores, matre viva, deesse non possent? quod iam intelligetis. An ut de causa eius periculi nihil decederet, ad causam novum crimen accederet? Quod autem tempus veneni dandi illo die? in illa frequentia? per quem porro datum? unde sumptum? quae deinde interceptio poculi? cur non de integro autem datum? Multa sunt, quae dici possunt: sed non committam, ut videar non dicendo voluisse dicere. Res enim iam se ipsa defendet. 168. Nego, illum adolescentem, quem statim epoto poculo mortuum esse dixistis, omnino illo die esse mortuum. Magnum et impudens mendacium! Perspicite cetera. Dico, illum, quum ad illud prandium crudior venisset, et, ut aetas illa fert, sibi tamen non pepercisset, aliquot dies aegrotasse, et ita esse mortuum. Quis huic rei testis est? Idem, qui sui luctus, pater: pater, inquam, illius adolescentis: quem, propter animi dolorem, pertenuis suspicio potuisset ex illo loco testem in A. Cluentium constituere, is hunc suo testimonio sublevat. Quod recita. Tu autem, nisi molestum est, paullisper exsurge, perfer hunc dolorem commemorationis necessariae: in qua ego diutius non morabor, quoniam, quod fuit viri optimi, fecisti, uti ne cui innocenti maeror tuus calamitatem et falsum crimen afferret. [Testimonium Balbutii patris.]

LXI. 169. Unum etiam mihi reliquum eiusmodi crimen est, iudices, ex quo illud perspicere possitis, quod a me initio orationis meae dictum est: quidquid mali per hos annos A. Cluentius viderit, quidquid hoc

tempore habeat sollicitudinis ac negotii, id omne a matre esse conflatum. Oppianicum veneno necatum esse, quod ei datum sit in pane per M. Asellium quendam, familiarem ipsius: idque Habiti consilio factum esse, dicitis. In quo primum illud quaero, quae causa Habito fuerit, cur interficere Oppianicum vellet. Inimicitias enim inter ipsos fuisse confiteor: sed homines inimicos suos morte affici volunt, aut quod metuunt, aut quod oderunt. 170. Quo tandem igitur Habitus metu adductus, tantum in se facinus suscipere conatus est? quid erat, quod iam Oppianicum poena affectum pro maleficiis, eiectum e civitate, quisquam timeret? quid metuebat? ne oppugnaretur a perdito? an ne accusaretur a condemnato? an ne exsulis testimonio laederetur? Sin autem, quod oderat Habitus inimicum, idcirco illum vita frui noluit: adeone erat stultus, ut illam, quam tum ille vivebat, vitam esse arbitraretur, damnati, exsulis, deserti ab omnibus? quem propter animi importunitatem, nemo recipere tecto, nemo adire, nemo alloqui, nemo respicere vellet? Huius igitur vitae Habitus invidebat? 171. Hunc si acerbe et penitus oderat: non eum quam diutissime vivere velle debebat? huic mortem maturabat inimicus, quod illi unum in malis perfugium erat calamitatis? qui si quid animi et virtutis habuisset, (ut multi saepe fortes viri in eiusmodi dolore,) mortem sibi ipse conscisset: huic quamobrem id vellet inimicus offerre, quod ipse sibi optare deberet? Nam nunc quidem quid tandem illi mali mors attulit? Nisi forte ineptiis ac fabulis ducimur, ut existimemus illum apud inferos impiorum supplicia perferre, ac plures illic offendisse inimicos, quam hic reliquisse: a socrus, ab uxorum, a fratris, a liberum Poenis actum esse praecipitem in sceleratorum sedem atque regionem.

Quae si falsa sunt, id quod omnes intelligunt, quid ei tandem aliud mors eripuit, praeter sensum doloris? 172. Age vero, venenum per quem datum? Per M. Asellium.

LXII. Quid huic cum Habito? Nihil: atque adeo, quod ille Oppianico familiarissime est usus, potius etiam simultas. Eine igitur quem sibi offensiorem, Oppianico familiarissimum sciebat esse, potissimum et suum scelus et illius periculum committebat? Cur deinde tu, qui pietate ad accusandum excitatus es, hunc Asellium esse inultum tamdiu sinis? Cur non Habiti exemplo usus es, ut per illum, qui attulisset venenum, de hoc praciudicaretur? 173. Iam vero illud quam non probabile, quam inusitatum, iudices, quam novum, in pane datum venenum? Faciliusne potuit, quam in poculo? latius potuit abditum aliqua in parte panis, quam si totum colliquefactum in potione esset? celerius potuit comestum, quam epotum in venas atque in omnes partes corporis permanare? facilius fallere in pane, (si esset animadversum) quam in poculo, quum ita confusum esset, ut secerni nullo modo posset? "At repentina morte periit." 174. Quod si esset ita factum: tamen ea res, propter multorum eiusmodi mortem, satis firmam veneni suspicionem non haberet. Si esset suspiciosum, tamen ad alios potius, quam ad Habitum pertineret. Verum in eo ipso homines impudentissime mentiuntur. Id ut intelligatis, et mortem eius, et, quemadmodum post mortem in Habitum sit crimen a matre quaesitum, cognoscite.

175. Quum vagus et exsul erraret, atque undique exclusus Oppianicus, in Falernum se ad C. Quintilium contulisset: ibi primum in morbum incidit, ac satis vehementer diuque aegrotavit. Quum esset una Sassia,

et Sex. Attio quodam, colono, homine valente, qui simul esse solebat, familiarius uteretur, quam vir dissolutissimus, incolumi fortuna, pati posset, et ius illud matrimonii castum atque legitimum damnatione viri sublatum arbitraretur: Nicostratus quidam, fidelis Oppianici servulus, percuriosus et minime mendax, multa dicitur renuntiare domino solitus esse. Interea Oppianicus quum iam convalesceret, neque in Falerno improbitatem coloni diutius ferre posset, et huc ad urbem profectus esset, (solebat enim extra portam aliquid habere conducti,) cecidisse ex equo dicitur, et homo infirma valetudine latus offendisse vehementer, et, posteaquam ad urbem cum febri venerit, paucis diebus esse mortuus. Mortis ratio, iudices, eiusmodi est, ut aut nihil habeat suspicionis, aut, si quid habet, id intra parietes in domestico scelere versetur.

LXIII. 176. Post mortem eius Sassia statim moliri nefaria mulier coepit insidias filio: quaestionem habere de viri morte constituit. Emit de A. Rupilio, quo erat usus Oppianicus medico, Stratonem quendam, quasi ut idem faceret, quod Habitus in emendo Diogene fecerat. De hoc Stratone et de Ascla quodam servo suo quaesituram esse dixit. Praeterea servum illum Nicostratum, quem nimium loquacem fuisse, ac nimium domino fidelem arbitrabatur, ab hoc adolescente Oppianico in quaestionem postulavit. Hic quum esset illo tempore puer, et illa quaestio de patris sui morte constitui diceretur: etsi illum servum, et sibi benevolum esse, et patri fuisse arbitrabatur, nihil tamen est ausus recusare. Advocantur amici et hospites Oppianici et ipsius mulieris multi, homines honesti, atque omnibus rebus ornati. Tormentis omnibus vehementissimis quaeritur. Quum essent animi servorum et spe et metu tentati, ut aliquid in

quaestione dicerent: tamen, ut arbitror, auctoritate advocatorum et vi tormentorum adducti, in veritate manserunt, neque se quidquam scire dixerunt. 177. Quaestio illo die de amicorum sententia dimissa est. Satis longo intervallo post iterum advocantur. Habetur de integro quaestio: nulla vis tormentorum acerrimorum praetermittitur: aversari advocati, et iam vix ferre posse: furere crudelis atque importuna mulier, sibi nequaquam, ut sperasset, ea, quae cogitasset, procedere. Quum iam tortor atque essent tormenta ipsa defessa, neque tamen illa finem facere vellet: quidam ex advocatis, homo et honoribus populi ornatus, et summa virtute praeditus, intelligere se dixit, non id agi, ut verum inveniretur, sed ut aliquid falsi dicere cogerentur. Hoc postquam ceteri comprobarunt, ex omnium sententia constitutum est, satis videri esse quaesitum. 178. Redditur Oppianico Nicostratus: Larinum ipsa proficiscitur cum suis, maerens, quod iam certe incolumem filium fore putabat, ad quem non modo verum crimen, sed ne ficta quidem suspicio perveniret: et cui non modo aperta inimicorum oppugnatio, sed ne occultae quidem matris insidiae nocere potuissent. Larinum postquam venit: quae a Stratone illo venenum antea viro suo datum sibi persuasum esse simulasset, instructam ei continuo et ornatam Larini medicinae exercendae causa tabernam dedit.

LXIV. Unum, alterum, tertium annum Sassia quiescebat, ut velle atque optare aliquid calamitatis filio potius, quam id struere et moliri videretur. 179. Tum interim Hortensio, Q. Metello consulibus, ut hunc Oppianicum aliud agentem, ac nihil eiusmodi cogitantem, ad hanc accusationem detraheret, invito despondit ei filiam suam, illam, quam ex genero

susceperat, ut eum nuptiis alligatum simul, et testamenti spe devinctum, posset habere in potestate. Hoc ipso fere tempore Strato ille medicus domi furtum fecit et caedem eiusmodi: quum esset in aedibus armarium, in quo sciret esse nummorum aliquantum et auri, noctu duos conservos dormientes occidit in piscinamque deiecit: ipse armarii fundum exsecuit, et IIS** et auri quinque pondo abstulit, uno ex servis, puero non grandi, conscio. 180. Furto postridie cognito, omnis suspicio in eos servos, qui non comparebant, commovebatur. Quum exsectio illa fundi in armario animadverteretur, quaerebant homines, quonam modo fieri potuisset. Quidam ex amicis Sassiae recordatus est, se nuper in auctione quadam vidisse in rebus minutis aduncam, ex omni parte dentatam et tortuosam venire serrulam, qua illud potuisse ita circumsecari videretur. Ne multa: perquiritur a coactoribus: invenitur ea serrula ad Stratonem pervenisse. Hoc initio suspicionis orto, et aperte insimulato Stratone, puer ille conscius pertimuit: rem omnem dominae indicavit: homines in piscina inventi sunt: Strato in vincula coniectus est: atque etiam in taberna eius nummi, nequaquam omnes, reperiuntur. 181. Constituitur quaestio de furto. Nam quid quisquam suspicari aliud potest? An hoc dicitis: armario expilato, pecunia ablata, non omni recuperata, occisis hominibus, institutam esse quaestionem de morte Oppianici? cui probatis? quid est, quod minus veri simile proferre potuistis? Deinde, ut omittam cetera, triennio post mortem Oppianici de eius morte quaerebatur? Atque etiam incensa odio pristino, Nicostratum eundem illum tum sine causa in quaestionem postulavit. Oppianicus primo recusavit. Posteaquam illa, abducturam se filiam, mutaturam

esse testamentum, minaretur; mulieri crudelissimae servum fidelissimum, non in quaestionem tulit, sed plane ad supplicium dedit.

LXV. 182. Post triennium igitur agitata denique quaestio de viri morte habebatur: et de quibus servis habebatur? Nova, credo, res obiecta, novi quidam homines in suspicionem vocati sunt. De Stratone, et de Nicostrato. Quid? Romae quaesitum de istis hominibus non erat? Itane tandem? Mulier iam non morbo, sed scelere furiosa, quum quaestionem habuisset Romae, quum de T. Annii, L. Rutilii, P. Saturii, et ceterorum honestissimorum virorum sententia constitutum esset, satis quaesitum videri: eadem de re triennio post, iisdem de hominibus, nullo adhibito, non dicam viro (ne colonum forte adfuisse dicatis) sed bono viro; in filii caput quaestionem habere conata est. 183. An hoc dicitis: mihi enim venit in mentem, quid dici possit, tametsi ab hoc non esse dictum mementote: quum haberetur de furto quaestio, Stratonem aliquid de veneno esse confessum? Hoc uno modo, iudices, saepe multorum improbitate depressa veritas emergit, et innocentiae defensio interclusa respirat: quod aut ii, qui ad fraudem callidi sunt, non tantum audent, quantum excogitant: aut illi quorum eminet audacia atque proiecta est, a consiliis malitiae deseruntur. Quod si aut confidens astutia, aut callida esset audacia, vix ullo obsisti modo posset. Utrum furtum factum non est? At nihil clarius Larini fuit. An ad Stratonem suspicio non pertinuit? At is et ex serrula insimulatus, et a puero conscio est indicatus. An id actum non est in quaerendo? Quae fuit alia igitur causa quaerendi? An, id quod dicendum vobis est, et quod tum Sassia dictitabat, quum de furto quaereretur,

tum Strato iisdem in tormentis dixit de veneno. 184. En hoc illud est, quod ante dixi: mulier abundat audacia: consilio et ratione deficitur. Nam tabellae quaestionis plures proferuntur, quae recitatae vobisque editae sunt, illae ipsae, quas tum obsignatas esse dixit: in quibus tabellis de furto litera nulla invenitur. Non venit in mentem, primum orationem Stratonis conscribere de furto, post aliquid adiungere dictum de veneno, quod non percontatione quaesitum, sed dolore expressum videretur. Quaestio de furto est, veneni iam suspicione, superiore quaestione, sublata; quod ipsum haec eadem mulier iudicarat: quae ut Romae de amicorum sententia statuerat satis esse quaesitum, postea per triennium maxime ex omnibus servis Stratonem illum dilexerat, in honore habuerat, commodis omnibus affecerat. 185. Quum igitur de furto quaereretur, et eo furto, quod ille sine controversia fecerat: tum ille de eo, quod quaerebatur, verbum nullum fecit? de veneno statim dixit? de furto, si non eo loco, quo debuit, ne in extrema quidem, aut media, aut in aliqua denique parte quaestionis, verbum fecit ullum?

LXVI. Iam videtis, illam nefariam mulierem, iudices, eadem manu, qua, si detur potestas, interficere filium cupiat, hanc fictam quaestionem conscripsisse. Atque istam ipsam quaestionem, dicite, quis obsignarit. Unum aliquem nominate. Neminem reperietis, nisi forte eiusmodi hominem, quem ego proferri malim quam neminem nominari. 186. Quid ais, T. Atti? tu periculum capitis, tu indicium sceleris, tu fortunas alterius literis conscriptas in iudicium afferes: neque earum auctorem literarum, neque obsignatorem, neque testem ullum nominabis? et, quam tu pestem innocentissimo filio

ex matris sinu deprompseris, hanc hi tales viri comprobabunt? Esto: in tabellis nihil est auctoritatis: quid? ipsa quaestio, iudicibus: quid? amicis, hospitibusque Oppianici, quos adhibuerat antea: quid? huic tandem ipsi tempori cur non reservata est? quid istis hominibus factum est, Stratone et Nicostrato? 187. Quaero abs te, Oppianice, servo tuo Nicostrato quid factum esse dicas: quem tu, quum hunc brevi tempore accusaturus esses, Romam deducere, dare potestatem indicandi, incolumem denique servare quaestioni, servare his iudicibus, servare huic tempori debuisti. Nam Stratonem quidem, iudices, in crucem actum esse exsecta scitote lingua: quod nemo est Larinatium qui nesciat. Timuit mulier amens non suam conscientiam, non odium municipum, non famam omnium: sed, quasi non omnes eius sceleris testes essent futuri, sic metuit, ne condemnaretur extrema servuli voce morientis.

188. Quod hoc portentum, dii immortales: quod tantum monstrum in ullis locis? quod tam infestum scelus et immane, aut unde natum esse dicamus? Iam enim videtis profecto, iudices, non sine necessariis me ac maximis causis, principio orationis meae de matre dixisse. Nihil est enim mali, nihil sceleris, quod illa non ab initio filio voluerit, optaverit, cogitaverit, effecerit. Mitto illam primam libidinis iniuriam: mitto nefarias generi nuptias: mitto cupiditate matris expulsam ex matrimonio filiam: quae nondum ad huiusce vitae periculum, sed ad commune familiae dedecus pertinebant. Nihil de alteris Oppianici nuptiis queror: quarum illa quum obsides filios ab eo mortuos accepisset, tum denique in familiae luctum atque in privignorum funus nupsit.

Praetereo, quod Aurium, cuius illa quondam socrus, paullo ante uxor fuisset, quum Oppianici esse opera proscriptum occisumque cognosceret, eam sibi domum sedemque [coniugii] delegit, in qua quotidie superioris viri mortis indicia, et spolia fortunarum videret. 189. Illud primum queror, de illo scelere, quod nunc denique patefactum est, Fabriciani veneni: quod iam tum recens, suspiciosum ceteris, huic incredibile, nunc vero apertum iam omnibus ac manifestum videtur. Non est profecto de illo veneno celata mater: nihil est ab Oppianico sine consilio mulieris cogitatum: quod nisi esset; certe postea, deprehensa re, non illa ut ab improbo viro discessisset, sed ut a crudelissimo hoste fugisset, domumque illam, in perpetuum, scelere omni affluentem, reliquisset. 190. Non modo id non fecit, sed ab illo tempore nullum locum praetermisit, in quo non instrueret insidias aliquas, ac dies omnes ac noctes tota mente mater de pernicie filii cogitaret. Quae primum ut istum confirmaret Oppianicum accusatorem filio suo, donis, muneribus, collocatione filiae, spe hereditatis obstrinxit.

LXVII. Ita quod apud ceteros, novis inter propinquos susceptis inimicitiis, saepe fieri divortia atque affinitatum discidia videmus: haec mulier satis firmum accusatorem filio suo fore neminem putavit, nisi qui in matrimonium sororem eius ante duxisset. Ceteri novis affinitatibus adducti, veteres inimicitias saepe deponunt: illa sibi ad confirmandas inimicitias, affinitatis coniunctionem pignori fore putavit. 191. Neque in eo solum diligens fuit, ut accusatorem filio suo compararet: sed etiam cogitavit, quibus eum rebus armaret. Hinc enim illae sollicitationes servorum et minis et promissis: hinc illae infinitae

crudelissimaeque de morte Oppianici quaestiones: quibus finem aliquando non mulieris modus, sed amicorum auctoritas fecit. Ab eodem scelere illae triennio post habitae Larini quaestiones: eiusdem amentiae falsae conscriptiones quaestionum: ex eodem furore etiam illa conscelerata exsectio linguae: totius denique huius ab illa est et inventa et adornata comparatio criminis. 192. Atque his rebus quum instructum accusatorem filio suo Romam misisset: ipsa paullisper, conquirendorum et conducendorum testium causa, Larini est commorata: postea autem, quum appropinquare huius iudicium ei nuntiatum est, confestim huc advolavit, ne aut accusatoribus diligentia, aut pecunia testibus deesset; aut ne forte mater hoc sibi optatissimum spectaculum huius sordium atque luctus, et tanti squaloris amitteret.

LXVIII. Iam vero quod iter Romam eius mulieris fuisse existimatis? quod ego, propter vicinitatem Aquinatium et Fabraternorum, ex multis audivi et comperi: quos concursus in his oppidis? quantos et virorum et mulierum gemitus esse factos? Mulierem quandam Larino, atque illam usque a mari supero Romam proficisci cum magno comitatu et pecunia, quo facilius circumvenire iudicio capitis atque opprimere filium posset. 193. Nemo erat illorum, paene dicam, quin expiandum illum locum esse arbitraretur, quacunque illa iter fecisset: nemo, quin terram ipsam violari, quae mater est omnium, vestigiis consceleratae matris putaret. Itaque nullo in oppido consistendi potestas ei fuit: nemo ex tot hospitibus inventus est, qui non contagionem adspectus fugeret. Nocti se potius ac solitudini, quam ulli aut urbi aut hospiti committebat. 194. Nunc vero quid agat, quid moliatur, quid denique

quotidie cogitet, quem ignorare nostrum putat? Quos appellarit, quibus pecuniam promiserit, quorum fidem pretio labefactare conata sit, tenemus. Quin etiam nocturna sacrificia, quae putat occultiora esse, sceleratasque eius preces, et nefaria vota cognovimus: quibus illa etiam deos immortales de suo scelere testatur, neque intelligit, pietate, et religione, et iustis precibus, deorum mentes, non contaminata superstitione, neque ad scelus perficiendum caesis hostiis posse placari. Cuius ego furorem atque crudelitatem deos immortales a suis aris atque templis aspernatos esse confido.

LXIX. 195. Vos, iudices, quos huic A. Cluentio quosdam alios deos ad omne vitae tempus fortuna esse voluit, huius importunitatem matris a filii capite depellite. Multi saepe in iudicando peccata liberum parentum misericordiae concesserunt: vos, ne huius honestissime actam vitam matris crudelitati condonetis, rogamus: praesertim quum ex altera parte totum municipium videre possitis. Omnes scitote, iudices, (incredibile dictu est, sed a me verissime dicetur,) omnes Larinates, qui valuerunt, venisse Romam, ut hunc studio frequentiaque sua, quantum possent, in tanto eius periculo sublevarent: pueris, illud, hoc tempore, et mulieribus oppidum scitote esse traditum, idque in praesentia, communi Italiae pace, in domesticis copiis esse totum. Quos tamen ipsos aeque, et eos, quos praesentes videtis, huius expectatio iudicii dies noctesque sollicitat. 196. Non illi vos de unius municipis fortunis arbitrantur, sed de totius municipii statu, dignitate, commodisque omnibus sententias esse laturos. Summa est enim, iudices, hominis in communem municipii rem diligentia, in singulos municipes benignitas, in omnes homines iustitia et fides. Praeterea

nobilitatem illam inter suos, locumque a maioribus traditum sic tuetur, ut maiorum gravitatem, constantiam, gratiam, liberalitatem assequatur. Itaque iis eum verbis publice laudant, ut non solum testimonium suum iudiciumque significent, verum etiam curam animi ac dolorem. Quae dum laudatio recitatur, vos quaeso, qui eam detulistis, assurgite. [LAUDATIO CLUENTII, EX DECURIONUM LARINATIUM DECRETO.] **197.** Ex lacrymis horum, iudices, existimare potestis, omnes haec decuriones decrevisse lacrymantes. Age vero, vicinorum quantum studium, quam incredibilis benevolentia, quanta cura est! Non illi in libellis laudationem decretam miserunt, sed homines honestissimos, quos nossemus omnes, huc frequentes adesse, et hunc praesentes laudare voluerunt. Adsunt Frentani, homines nobilissimi, Marrucini item pari dignitate: Teano Apulo, atque Luceria equites Romanos, honestissimos homines, laudatores videtis: Boviano, totoque ex Samnio quum laudationes honestissimae missae sunt, tum homines amplissimi nobilissimique venerunt. 198. Iam qui in agro Larinati praedia, qui negotia, qui res pecuniarias habent, honesti homines, et summo splendore praediti, difficile dictu est, quam sint solliciti, quam laborent. Non multi mihi ab uno sic diligi videntur, ut hic ab his universis.

LXX. Quam non abesse ab huius iudicio L. Volusienum, summo splendore hominem ac virtute praeditum vellem! Quam vellem praesentem posse P. Helvidium Rufum, equitem Romanum omnium ornatissimum, nominare! qui, quum, huius causa, dies noctesque vigilaret, et quum me hanc causam doceret, in morbum gravem periculosumque incidit: in quo tamen non minus de capite huius, quam de sua vita laborat.

Cn. Tudicii senatoris, viri optimi et honestissimi, par studium in testimonio et laudatione cognoscetis. Eadem spe sed maiore verecundia, de te, P. Volumni, quoniam iudex es in A. Cluentium, dicimus. Et, ne longum sit, omnium vicinorum summam esse in hunc benevolentiam, confirmamus. 199. Horum omnium studium, curam, diligentiam, meumque una laborem, qui totam hanc causam, vetere instituto, solus peroravi, vestramque simul, iudices, aequitatem et mansuetudinem una mater oppugnat. At quae mater? quam caecam crudelitate et scelere ferri videtis: cuius cupiditatem nulla unquam turpitudo retardavit: quae vitiis animi in deterrimas partes iura hominum convertit omnia: cuius ea stultitia est, ut eam nemo hominem; ea vis, ut nemo feminam; ea crudelitas, ut nemo matrem appellare possit. Atque etiam nomina necessitudinum, non solum naturae nomen et iura mutavit: uxor generi, noverca filii, filiae pellex: eo iam denique adducta est, ut sibi, praeter formam, nihil ad similitudinem hominis reservarit. 200. Quare, iudices, si scelus odistis, prohibete aditum matris a filii sanguine: date parenti hunc incredibilem dolorem ex salute, ex victoria liberum: patimini, matrem, ne orbata filio laetetur, victam potius vestra aequitate discedere. Sin autem, id quod vestra natura postulat, pudorem, bonitatem, virtutemque diligitis: levate hunc aliquando supplicem vestrum, iudices, tot annos in falsa invidia periculisque versatum, qui nunc primum post illam flammam, aliorum facto et cupiditate excitatam, spe vestrae aequitatis erigere animum, et paullum respirare a metu coepit: cui posita sunt in vobis omnia: quem servatum esse plurimi cupiunt, servare soli vos potestis. 201. Orat vos Habitus, iudices, et flens obsecrat ne se invidiae quae in iudiciis

valere non debet, ne matri, cuius vota et preces a vestris mentibus repudiare debetis, ne Oppianico, homini nefario, condemnato iam et mortuo, condonetis.

LXXI. Quod si qua calamitas hunc in hoc iudicio afflixerit innocentem: nae iste miser, iudices, si, id quod difficile factu est, in vita remanebit, saepe et multum queretur, deprehensum esse illud quondam Fabricianum venenum. Quod si tum indicatum non esset, non huic aerumnosissimo venenum illud fuisset, sed multorum medicamentum laborum: · postremo etiam fortassis mater exsequias illius funeris prosecuta, mortem se filii lugere simulasset. Nunc vero quid erit profectum, nisi ut huius ex mediis mortis insidiis vita ad luctum conservata, mors sepulcro patris privata esse videatur? 202. Satis diu fuit in miseriis, iudices: satis multos annos ex invidia laboravit. Nemo huic tam iniquus, praeter parentem fuit, cuius animum non iam expletum esse putemus: vos, qui aequi estis omnibus, qui, ut quisque crudelissime oppugnatur, eum lenissime sublevatis, conservate A. Cluentium: restituite incolumem municipio: amicis, vicinis, hospitibus, quorum studia videtis, reddite: vobis in perpetuum liberisque vestris obstringite. Vestrum est hoc, iudices, vestrae dignitatis, vestrae clementiae: recte hoc repetitur a vobis, ut virum optimum atque innocentissimum, plurimisque mortalibus carum atque iucundissimum, his aliquando calamitatibus liberetis: ut omnes intelligant, in concionibus esse invidiae locum, in iudiciis veritati.

NOTES.

All the best MSS. of this speech uniformly exhibit the name of the defendant under the form *Habitus*, or *Abitus*, and so, for the most part, do all the best MSS. of Quintilian. Such also was the reading of all the early editions, but Lambinus (1566) introduced *Avitus*, at the suggestion of Cuiacius, who believed that this was the reading in the famous Florentine MS. of the Pandects (XLVIII. xix. 39), and accordingly *Avitus* was admitted by subsequent editors, down to Orelli inclusive. Upon closer inspection it was found that, after all, the reading in the Florentine MS. of the Pandects, is not *Avitus* but *Abitus*, that is *Habitus* with the aspirate dropped, an omission extremely common in like cases in old MSS. *Habitus* as a Roman name is found in the Fasti Capitolini, and *Abitus* in an inscription published by Fulvius Ursinus. Niebuhr (Rhein. Mus. I. 3, p. 223) seems first to have called attention to the real state of the case, *Habitus* has been adopted by Classen, Baiter and others, and will probably be received by all future editors.

I. § 1. ..... *in duas divisam esse partes.*] On the general plan and divisions of the speech, see Prolegomena, § 3.

I. § 1. ..... *quarum altera ..... altera tantummodo.*] It would seem that *altera ... altera* are both in the ablative, the nominative to *videbatur* being *accusator*. The Turin Palimpsest has *alteram tantummodo*, but the vulgate is much better.

I. § 1. ..... *invidia iam inveterata.*] Here and in many other passages in this speech *invidia* signifies ill-will arising from prejudice, and may in most cases be fairly translated simply by the word prejudice. *Invidia inveterata* is prejudice which has taken deep root in consequence of having been long cherished undisturbed.

I. § 1. ..... *iudicii Iuniani.*] See Prolegg. § 2.

I. § 1. ..... *invidiae et criminum.*] Here and throughout the speech Cicero endeavours to draw a broad line between the *invidia* or prejudice against his client which the accuser endeavoured to turn to the best account, and the *crimina* or direct charges under which he was impeached.

I. § 1. ..... *subterfugere ... reticendo.*] The young scholar will observe that while *tacere* signifies simply to be silent without implying that there is anything to be told, *reticere*, on the other hand, indicates that there is something which might be told but which is wilfully kept back. In Chap. VI. § 17, *reticere* is used transitively—*reticere parentum iniurias.*

I. § 2. ..... *altera pars, ea quae propria est,* &c.] So Lambinus and most edd. of note. The MSS. vary considerably, but the matter is of trifling importance. A. B. and several others have *pars est ea;* C. *pars et ea* which is adopted by Classen; but the *et* would have an awkward and embarassing effect when followed by the *et* before *legitimae;* other MSS. have simply *altera pars quae,* which is perhaps the true reading, *ea, et ea,* and *est ea* being glosses.

I. § 2. ..... *per mihi brevis.*] We find elsewhere in Cicero examples of this separation of a preposition from the word with which it is compounded, an arrangement to which the term *Tmesis* has been applied by grammarians. Thus—*per mihi, per, inquam, gratum feceris—per enim magni aestimo,* &c.

I. § 2. ..... *concionibus seditiose concitatis.*] Cicero here alludes to the turbulent public meetings which were factiously harangued by the Tribune Quintius, and which are more particularly described below, XXVIII. § 77. XXXIV. § 93.

I. § 3. ..... *Sed in hac difficultate.*] So A. B. C. and so Class. All other MSS. and edd. have *hac tanta difficultate,* and *tanta* ought perhaps to be retained both with reference to the *quantum* which precedes, and to the *tamen* which follows.

I. § 3. ..... *illa me res tamen,* &c.] Cicero here means—I am comforted in my embarrassment, great as it is, by the reflexion that you, being experienced jurors, are well accustomed to deal fairly with direct charges (*crimina*). On the one hand, you do not believe such a charge as soon as it is stated by the accuser, but wait until you see whether the advocate on the other side can disprove it—on the other hand, you shew no bias in favour of the accused, and give no credit to the assertions made on his behalf unless they are substantiated by arguments and evidence. So far, therefore, as the direct charges (*crimina*) against my client are concerned, I rely fully on your uprightness and impartiality. But it is the prejudice (*invidia*) prevailing against Cluentius which alarms me, and I must implore you to dismiss this from your minds both for his sake and for the sake of the common safety of all. By the direct charges of poisoning preferred against Cluentius no one is endangered but himself (*agitur A. Cluentii proprium periculum*), but if prejudice is allowed to have weight in courts of justice, then the safety of the community at large is imperilled (*agitur causa communis*). See below, I. § 4. *communi incendio* and note—and III. § 8. *communibus invidiae periculis.* C. has *eorum omnium dissolutionem,* but the common reading *omnem* is better.

I. § 3. ..... *inter vos disceptare.*] C. E. and several other MSS. have *nos,* which is adopted by Baiter, who quotes the following note from some unpublished papers of Garatoni.

"Quaenam haec est iudicum inter se disceptatio? Ii vero tabellis tacite sententiam ferebant neque inter se, verum inter accusatorem et reum disceptabant. Cf. Liv. I. 50. Plin. Epp. VII. 15. De Inv. I. 3. Quod autem sequitur *a nobis* de Accio simul et Tullio dicitur: esset enim, si de se tantum ipso a Tullio diceretur, absurdum. Legendum *inter nos,* ut habet codex meus."

Inter nos may be the true reading, but the reasoning of the Italian scholar is by no means convincing. It is quite true that the jurors voted by ballot, but this circumstance would not preclude discussion—and if we understand *de nobis* to refer to Cicero alone, the meaning far from being absurd, is at once clear and forcible. In a matter of this importance, says the orator, do not rest satisfied with deliberating on what may be actually urged by me, but on what I ought to urge were I capable of doing full justice to the subject. For (*enim*) this is a matter which does not affect the safety of an individual only, but of the whole community.

I. § 3. ..... *fides imploranda.*] The *fides* of a juror was the integrity and sense of honour which would prompt him to discharge his duty faithfully—the *religio* of a juror was the obligation imposed upon him by the sanctity of his oath. See below, IV. § 10. XLII. § 118.

I. § 3. ..... *sine vestro ac sine talium virorum subsidio.*] So all the MSS. (except one bad codex which omits *sine*) and so all edd. Classen, who retains the vulgate, remarks that commentators have overlooked a serious difficulty existing in this passage, and considers that some corruption lurks in the word *ac. Vestro subsidio,* he argues, means the aid of you who are the jurors, while *tales viri,* which is a complimentary expression frequently applied by Cicero to the members of a jury whom he is addressing,[1] must also refer to the same persons as those indicated in *vestro subsidio* and not to another body of individuals as the use of the conjunction *ac* would imply. The difficulty here discovered seems imaginary. Cicero is stating a general proposition. As far as the prejudice against my client is concerned, I must throw myself upon your high sense of honour and duty (*fides*). Upon this alone can I rely. For there is no one who can withstand the force of prejudice without your aid and the aid of men such as you are—i. e. men of equally high principles with yourselves. *Tales* is not a mere complimentary form in this passage, but is to be taken in the ordinary and simple acceptation of the word. Baiter brackets the words [*ac sine*], and if we adopt this view, the meaning assigned to the passage by Classen will be fairly brought out.

I. § 4. ..... *quo me vertam, nescio.*] This passage is quoted by Romanus Aquila as an example of the rhetorical Figure called *Diaporesis* or feigned hesitation, which is thus defined—Diaporesis *est addubitatio qua utimur quum propter aliquas res volumus videri dubitare et quasi ab ipsis iudicibus consilium capere quo potissimum genere orationis utamur.*

I. § 4. ..... *negem illam rem agitatam.*] Classen and Baiter following A. B. and other MSS., read *negem esse illam rem agitatam.* But many MSS. omit *esse,* and rightly, for it could scarcely stand here, unless it were intended to denote present time in opposition to *fuisse* in the first clause. The *infamia* might be said still to exist, while all the other circumstances mentioned belong to a remote period. Hence we might read without impropriety—*negem esse illam infamiam ... negem fuisse illam rem,* &c., but not vice versa.

[1] Classen refers to Pro Quinct. XVI. § 55. XXVI. § 81. Pro Rosc. Am. XIX. § 54. Divin. in Q. Caecil. XVI. § 51.

I. § 4. .....*concionibus...iudiciis...senatu.*] Observe that public speaking of all kinds is here indicated, while the verbs *agitare ... iactare ... commemorare* denote, to a certain extent, the style appropriate to the different audiences. The *conciones* are the public meetings called by the Tribune Quintius, the *iudicia* are the various trials which followed the condemnation of Oppianicus, *senatu* the proceedings in the senate with reference to the same affair—all of which are fully detailed in the course of this speech.

I. § 4. ..... *evellam* &c.] The belief or prejudice is here compared to a tree with large, deep-struck, old roots. No epithet is unnecessary—*tantam* implies that the roots were large and strong—*penitus insitam*, that they had penetrated deep into the ground—*vetustam*, that they had been long there, and therefore adhered firmly. The roots might have been large and strong without going deep, they might have been strong and deep without having been long attached to the spot, as in the case of a transplanted tree, but being at once *large, deep* and of *long standing*, they must have clung close and been hard to eradicate.

I. § 4. ..... *perniciosissima flamma*, &c.] A most destructive fire might involve the property of one individual only, but being a *commune incendium*, the interests of all were at stake. If the principle of permitting prejudice to influence the decisions of a court was once admitted, all might have cause to dread the results, for the same instrument might be applied to procure the ruin of any one. See above, *causa communis* and note I. § 3.

II. § 5. ..... *aliis in locis.*] Such as excited public meetings.

II. § 5. ..... *veritas habet.*] So the great majority of the best MSS. A few MSS., D. among the number, and most of the earlier edd. have *falsitas*, which seems to be a fanciful correction, quite out of place.

II. § 5. ..... *iudiciorum aequorum.*] The epithet *aequorum* is here emphatic. What follows is not a *definitio* of *iudicia* in general, but of what constitutes *iudicia aequa*.

II. § 6. ..... *ut ne quid huc.*] A. B. and several other MSS. have *huic*, but the common reading is supported by C., and is acquiesced in by Classen and Baiter.

II. § 6. ..... *si ad causas.*] So A. B., Class. and Bait. All other MSS. and edd. have *ac si ad* which is quite inadmissible after the *nisi* of the preceding clause. Even with the omission of *ac*, there is something awkward and abrupt in the form of the sentence.

II. § 6. .....*convellet ... labefactabit ... extorquebit.*] *Convellere* is pluck away by a straight pull; *Labefactare* is to shake an object backwards and forwards and so to loosen its hold of anything to which it may be attached; *Extorquere* is to wrench out by a twist; Thus if we wished to pull a stake from the ground we should first attempt *convellere*, if this failed we should proceed *labefactare*, and finally, if still unsuccessful, *extorquere*. The same processes would be applied if we wished to deprive a person by violence of anything which he was grasping firmly (*comprehendebat*). In the next clause *remittatis* means let go your hold.

Oratio labefactabit is the reading of A. B. C. and the Cod. S. Vict., but many MSS. and edd. have *ratio labefactabit.*

II. § 6. ..... *ne repugnetis, eamque*, &c.] We should rather have expected *sed eam.*

II. § 6. ..... *quae contraria sint.*] So A. C., Class. and Bait. All other MSS. and most edd. have *Sunt* except B. which omits the word. The subjunctive is certainly more appropriate here, for Cicero cannot be supposed to know distinctly what particular circumstance would produce an unfavourable impression on the minds of the jurors, or, at all events, he would not have indicated that he knew that there were particular circumstances which would have this effect; but this would be implied by using the indicative *Sunt.*

II. § 6. ..... *taciti cogitationi*, &c.] *Contraria taciti cogitationi subiicere* is mentally to call up facts or arguments which seem to invalidate the reasonings of an advocate, and thus silently to place ourselves in opposition to him—a process with which every one who has listened to a pleader with whom he does not perfectly agree, is familiar, and which, to a certain extent, both distracts the hearer and places him in antagonism, as it were, to the orator. Cicero implores the jurors not to give way to any such feeling, but to hear him patiently to the end and then, after he shall have concluded his discourse, if any point of importance should appear to have been passed over, they will be free to note the defect and mentally to demand that it should be supplied (*animo requirere*). The general force of the passage will be—Do not mentally admit any impression unfavourable to my cause until you have heard me fairly to the end, and then if I shall appear to have omitted anything, to have blinked any portion of the charge, mark the defect and turn it to my disadvantage if you will.—Classen says—*Animo requirere* nihil aliud est, quam quod modo dixerat, *tacitum cogitationi subiicere:* quod enim inter ipsam defensionem iudices facere vetuit orator, id ut faciant absoluta oratione, hortatur. But this explanation appears to me to be neither quite distinct nor absolutely correct.

A few MSS. have *a me requiratis*, a reading adopted by Lambinus and all succeeding editors down to Orelli. Baiter quotes from the papers of Garatoni "Neque *a me* neque *animo* adesse velim: satis est *requiratis.* Certe causa perorata testes interrogabantur, non defensor. Suspicor *a me* esse glossema ad v. *praeteritum*, deinde *animo* subiectum ex praecedente *cogitatione.*" The objection applies to *a me* only and not to *animo*, the force of which we have endeavoured to explain. Even if we read *a me* we cannot suppose that Cicero meant to invite the jury to call upon him to supply the defects in his speech after the pleadings were concluded.

II. § 6. ..... *sed ad extremum.*] So all MSS. and edd. except A. B. and Class., who omit *ad*, Baiter retains it. The insertion or omission of the preposition is of little or no importance, but it seems more natural to retain it. In the next clause C. has *meque* and so Class., A. B. *me* without the conjunction, all other MSS. and edd. *et me* with the exception of one MS. which has *ut me*, an evident error. This example will serve to show how the lists of various readings become swelled.

III. § 7. ..... *ex contraria parte audiatur.*] Has been and still is listened to from the opposite side, i. e. is known only from the representations of my opponents. A few MSS. and edd.

have *auditur*, but Cicero is not here making a direct assertion of a fact, but is speaking of what is passing through his mind—*audiatur* is dependent upon *intelligo*.

III. § 8. ..... *de communibus invidiae periculis.*] See above, notes on I. § 3. *agitur causa communis*, and I. § 4. *communi incendio.*

III. § 8. ..... *aggrediar ad crimen.*] i. e. I will step up to, confront and grapple with the charge.

III. § 8. ..... *non quasi saepe iam dicta et nunquam probata sit.*] The meaning here seems to be—and not look upon it as a cause which has been often pleaded in court[1] and has always produced dissatisfaction, i.e. has always produced an impression unfavourable to my client. We have *probata* in exactly the same sense in L. § 138, where *commemorationem iudiciorum quae probata non essent* means trials which had caused dissatisfaction in the public mind.

IV. § 9. ..... *caput illius atrocitatis.*] i. e. the savage hostility displayed against Cluentius.

IV. § 9. ..... *quid res ipsa tulerit, quid error affinxerit, quid invidia conflarit.*] It is somewhat difficult to catch the idea here figuratively expressed. It seems to be this—truth presents us with a plain and simple object—a real fact (*res ipsa*)—mistake or falsehood fabricates, as a potter moulds his clay, various adjuncts which she attaches to the original object,—and these two, the original object and the superadded fabrication, are fused together and inseparably combined in the fiery furnace blown up by prejudice. We have *conflare* again, VI. § 18.

IV. § 10. ..... *ad accusandum descenderit.*] The same verb is here used with regard to an accuser as with regard to a candidate for public honours (*descendit in campum petitor*), the Forum where the Courts of Law were situated, and the Campus Martius where the elections took place, both lying low relatively to the hills on which the greater part of Rome, at this time, was built.

IV. § 10. ..... *fide atque officio defensionis.*] *Fides* is the principle of truth and honour which prompts men to act with integrity under all circumstances. See above, I. § 3.

Officium is the duty which we owe to an individual in consequence of a special obligation.

Cicero was bound by the general laws of truth and honour to do all in his power on behalf of Cluentius, and even had he been devoid of high principle, by the duty which as an advocate he owed to his client. Aulus Gellius (N. A. V. 13.) enumerates the "Gradus" of *officium* which, "ex moribus Populi Romani" were thus arranged—1. Parentes.—2. Pupilli. —3. Clientes.—4. Hospites.—5. Cognati et Affines.

IV. § 10. ..... *satisfacere.*] This word is omitted in A. B., is retained by Classen and bracketed by Baiter.

[1] That is, introduced in connection with the various trials which took place after the condemnation of Oppianicus.

IV. § 10. ..... *pro incolumi et vivo.*] Classen argues strongly in favour of the reading *et pro vivo* which is found in A. B. and several other MSS. and which has been adopted by Baiter. In the preceding clause we have *contra damnatum et mortuum;* and in the clause which we are now discussing *incolumi* is opposed to *damnatum*, *vivo* to *mortuum*. It would therefore destroy the symmetry of the antithesis if we were to read *pro incolumi et pro vivo* unless we were at the same time to introduce *contra damnatum et contra mortuum*, which no one would propose.

Incolumis here means, one who has never been found guilty of a crime by a court of justice.

IV. § 10. .....*hic autem, pro quo dicimus ..... accipere.*] Such is the reading of A. B., Class. and Bait., all other MSS. and edd.[1] have *huic autem pro quo dicitur ... accedere*—and this ought to be retained. Classen argues that *accipere* is more appropriate here than *accedere*; for Cluentius being *incolumis*, the fear was that he might now for the first time suffer damage, not that he might suffer *additional* damage, for he was as yet intact. But the *invidia* under which Cluentius had so long laboured might surely be regarded as an *offensio* (misfortune), the term here used; according to this view there can be no objection to *accedere* and we shall preserve the symmetry of the sentence—*illi in quem dicitur ... huic pro quo dicitur*, which is destroyed by the reading in A. B.

IV. § 10. ..... *sine acerbissimo animi sensu ac molestia.*] So A. B., Class. and Baiter. All other MSS. and edd. have *dolore* instead of *molestia*. Classen supposes the change to have been introduced by some half-learned transcriber who was offended by the adjective *acerbissimo* applying to two substantives of different genders. But, on the other hand, we might suppose *molestia* to have been substituted by some transcriber who was offended by *doloris* and *dolore* in two consecutive sentences. On the whole, the arguments in favour of *molestia* are not of sufficient weight to overthrow the agreement of the great majority of MSS.

IV. § 11. ..... *gloria.*] i. e. Vanity. Observe the double meaning of *Gloria*. 1. Renown or Distinction.—2. An empty craving after renown or distinction, and hence, *Gloriari*, to boast.

V. § 11. *A. Cluentius Habitus.*] With regard to the name of the defendant, see note on the title of the speech.

V. § 11. ..... *municipii Larinatis.*] Larinum, the ruins of which now bear the name of *Larino vecchio*, was situated about 12 miles from the Upper Sea, on the right bank of the Tifernus (*Biferno*), which divided Apulia from the country of the Frentani. It appears certain, however, that this clan must have founded, or, at least, at one time possessed Larinum, since the inhabitants are styled by Pliny (H. N. III. 16.) *Larinates cognomine Frentani.* Silius Italicus describes its position (XV. 565.)

> Quaque iacet Superi Larinas accola Ponti,
> Qua duri bello gens Marrucina, fidemque
> Exuere indocilis sociis Frentanus in armis.

[1] Except Lambinus, who has *accidere*.

V. § 11. ..... *virtute, existimatione, nobilitate.*] The first of these words denotes high principle and its effect, probity—the second, the reputation enjoyed by an individual among his fellow-men—the third, simply high birth or a high social position. A man might have *Virtus* and yet not enjoy *Existimatio*, and vice versa; a man might have both without being *nobilis*, and might be *nobilis* without having either.

V. § 11. ..... *Sulla et Pompeio consulibus.*] He refers to the Consulship of L. Cornelius Sulla and Q. Pompeius Rufus, B. C. 88.—Hence the younger Cluentius was born B. C. 103.—The epoch is remarkable. In this year the Social war was brought to a close, the first Mithridatic war commenced, the civil strife between Marius and Sulla burst forth, and the first proscription took place.

I am surprised that Classen should, on the authority of A. B. and one or two other MSS. have admitted into his text the form *Sylla*, which is completely at variance with the principles of Roman orthography. C. has uniformly *Sulla*.

V. § 11. ..... *consobrino suo.*] Her first cousin. The children of two sisters were termed, in relation to each other, *consobrini* or *consobrinae* —the children of two brothers, or, of a brother and sister, *Amitini* (*ae*).

V. § 11. ..... *ut tum habebatur.*] *Tum* is emphatic—his character stood high at *that time*, afterwards it sunk.

V. § 12. ..... *in omni causa.*] So A. B. and one MS. of Lambinus, who adopted the reading. So also Class. and Baiter. All other MSS. and edd. (except Schütz who omits the words) have *nominis causa*, i. e. for form's sake. Classen argues that such an expression as *nominis causa* would be altogether at variance with the sentiment which the orator desires to express. His object is to bring the frantic wickedness of Sassia more distinctly before his audience, by contrasting the feelings and duties implied by the sacred name of *mother* with her atrocious conduct. He therefore declares that he is determined to give her the title of *mother* throughout his pleading (*in omni causa*), albeit she is unworthy of the name—*neque unquam illa ita de suo scelere et immanitate audiet, ut naturae nomen amittat*—and then continues—*quo enim*, &c., MAIORE ODIO DIGNUM ESSE DUCETIS.

All this is most ingenious and plausible, but I still hesitate, for, 1. Although the expression *in omni causa* in the sense of *in tota hac causa* may be defended, this use of *omnis* is certainly rare, especially in Cicero. 2. *nominis causa* affords a plain and satisfactory meaning, notwithstanding the refinements of Classen. 3. *nominis causa* was much more likely to be corrupted into the common and obvious form *omni causa*, than the latter into the former. 4. In the first part of the sentence Cicero takes credit as it were for his forbearance in consenting, even for form's sake, to give her the appellation of mother, and then adds that this forbearance on his part will in reality tend to make her guilt appear more odious.

V. § 12. ..... *interfectum cupit.*] Several MSS. have *cupiat*, but the indicative is required for the clause *quae multos ... cupit* is parenthetical and contains a direct assertion on the part of Cicero.

V. § 12. ..... *continebatur.*] So all MSS. and edd. except A. B., which have *continebat*, whence Baiter conjectures that the true reading may be *in illa cupiditate se continebat.*

V. § 12. ..... *non pudor, non pudicitia.*] The words *non pudicitia* are omitted in A. B., are bracketed by Baiter, but retained by Class., and rightly. From the resemblance of *pudor* and *pudicitia*, a careless transcriber might readily allow one of them to drop out, or a half-learned copyist might designedly omit *pudicitia*, regarding it as synonimous with *pudor*. This, however, strictly speaking, is not the case. *Pudor* and *Pudicitia* are connected as cause and effect. *Pudor* is, properly, the principle of modesty, which produces *Pudicitia*, or purity of conduct.—*Pudor* belongs to the mind, *Pudicitia* to the body. Sallust (Cat. 12,) employs the terms together. Moreover, although we can satisfactorily account for the omission of *pudicitia* in the process of transcription, it is not easy to see how it could have been interpolated.

V. § 12. ..... *non filii dolor, non filiae maeror*, and V. § 14. ..... *exsultare laetitia, ac triumphare gaudio.*] Cicero in the Tusculan Disputations (IV. 4 seqq.) divides mental perturbations (*animi perturbationes*—*πάθη*) into four Genera, viz.: *Aegritudo, Laetitia, Metus, Lubido.* The different species of *Aegritudo* are—1. *Invidentia.* 2. *Aemulatio.* 3. *Obtrectatio.* 4. *Misericordia.* 5. *Angor.* 6. *Luctus.* 7. *Maeror.* 8. *Aerumna.* 9. *Dolor.* 10. *Lamentatio.* 11. *Sollicitudo.* 12. *Molestia.* 13. *Adflictatio.* 14. *Desperatio;* and in enlarging upon these he explains *Dolor* to be *Aegritudo crucians*, and *Maeror* to be *Aegritudo flebilis*, definitions which agree well with the use of the words in our text, the former denoting the fierce pangs of manly grief in the son, the latter the more gentle and subdued misery of the daughter.

With regard to *Laetitia* he says (IV. vi. § 13.)—Quom ratione animus movetur placide atque constanter, tum illud *Gaudium* dicitur: quom autem inaniter et ecfuse animus exsultat, tum illa *Laetitia gestiens* vel *nimia* dici potest, quam ita definiunt, *sine ratione animi elationem.*—In our text the verb *exsultare* annexed to *Laetitia* clearly brings it under the head of *Laetitia gestiens*, while the *triumphare Gaudio* expresses the inward joy. We find the combination—*Triumpho, gaudeo*—in a letter from Caesar to Cicero (Ad. Att. IX. 16).

V. § 13. ..... *consilio ac ratione.*] *Consilium* here denotes wisdom derived from without, i. e. from the precepts and advice of prudent men. *Ratio*, the conviction of truth arising from reasoning carried on in our own mind.

V. § 13. ..... *illo communi dolore muliebri.*] i. e. That anguish which all women alike feel under such circumstances.

V. § 13. ..... *nefarium matris pellicatum.*] Here and elsewhere in this speech *pellex* and *pellicatus* are used in their strict technical sense. *Pellex* is properly the concubine of a married man. Hence, in the best writers it is employed with direct reference to the injured wife. Thus *pellex sororis* is the mistress of a sister's husband, and below (LXX. § 199.) Sassia is termed *pellex filiae*, i. e. the mistress of her daughter's husband. See Aul. Gell. N. A. IV. 3. Paul. Diac. s. v. *Pellices*, p. 222, ed. Müller.

V. § 14. ..... *Itaque diutius.*] So all MSS. except A. B., which omit *itaque*. It is retained by Classen but omitted by Baiter, who thus punctuates the passage—*victrix filiae, non libidinis, diutius suspicionibus obscuris laedi famam suam nolui.*

V. § 14. ..... *nullis auspicibus.*] We may take as a commentary the words of Cicero, De Div. I. xvi. § 28.

Nihil fere quondam maioris rei, nisi auspicato, ne privatim quidem, gerebatur: quod etiam nunc nuptiarum auspices declarant, qui, re omissa, nomen tantum tenent.—A passage which appears in a somewhat expanded form in Valerius Maximus, II. i. § 1.

Apud antiquos non solum publice sed etiam privatim nihil gerebatur nisi auspicio prius sumto. Quo ex more nuptiis etiam nunc[1] auspices interponuntur, qui, quamvis auspicia petere desierint, ipso tamen nomine veteris consuetudinis vestigia usurpant.

In the time of Plautus the omens were probably actually observed on such occasions—in the Prologue to the Casina (85) we read

> Argentum si quis dederit, ut ego suspicor,
> Ultro ibit nuptum, non manebit auspices.

Juvenal, when describing the preparations made by Messalina for her formal nuptials with Silius—

> ..... dudum sedet illa parato
> Flammeolo, Tyriusque palam genialis in hortis
> Sternitur, et ritu decies centena dabuntur
> Antiquo, veniet cum signatoribus auspex,

with which compare Sueton. Claud. 26.

V. § 14. ..... *nullis auctoribus.*] According to Roman Law a woman was never regarded as completely *sui iuris.* She was always *In Potestate parentis,* or *In Manu viri,* or *In tutela.* Hence, strictly speaking, she could perform no legal act without the sanction of her father, or of her husband, or of her guardian, as the case might be, and the person or persons who gave this sanction became *Auctor* or *Auctores* of the transaction. Thus in the speech on the Lex Oppia, ascribed by Livy (XXXIV. 2.) to Cato—Maiores nostri, nullam, ne privatam quidem, rem agere feminas sine auctore voluerunt: in manu esse parentum, fratrum, virorum. —Here *nullis auctoribus* implies that this marriage was not countenanced or graced by the presence of any of the relatives or friends of Sassia.

Auctor is used below (XXIV. § 66.) in the general sense of supporter, defender, unless *fautore* is the true reading. See note on the passage in question.

VI. § 15. ..... *nonne timuisti.*] So A. B. and other MSS. and so Class. If this be the true reading Cicero ceases for a moment to address the jury and apostrophises Sassia as if she were actually present. Many MSS. however, and edd. have *nonne timuisse,* and the best MSS. of Quintilian (I. O. IV. ii. § 105.) have either *non timuisse* or *nonne timuisse.* This is probably right, for *nonne timuisse* was more likely to have been changed into *nonne timuisti* than vice versa.—Baiter has *nonne timuisse.*

VI. § 16. *Tulit hoc commune dedecus iam familiae.*] A. B. and several MSS. and edd. omit *iam* and so Class. and Baiter. But *iam* which is found in D. E. and many good MSS. may be fairly defended as qualifying *commune dedecus.*—The disgrace which was no longer confined to Sassia individually, but *now* extended to the whole family, *now* that she had been guilty of this outrage. *Iam* was little likely to have been interpolated, but might have been readily omitted in consequence of not

[1] Valerius Maximus probably flourished under the Emperor Tiberius.

being understood. Classen supposes it to have grown out of the *fam* at the beginning of the next word.

VI. § 16. ..... *quam ut illa matre.*] A. B. omit *matre* and so Class. and Baiter, but all other MSS. have *matre,* and rightly; for the word is here emphatic. Cluentius resolved to take no step more violent than simply refraining from holding intercourse with that woman as a mother.

VI. § 16. ..... *nam quae.*] This is a conjectural emendation of Classen, approaching closely to the reading of A. B., which is *namque.* All other MSS. have *ne quam,* to which, notwithstanding all that has been said by Classen, there is no substantial objection. At all events *ne* seems to be absolutely required, and if *ne quam* is offensive, we may admit *ne quae,* the conjecture of Garatoni, which has been adopted by Baiter. Observe, also, that although A. B. have *namque,* B. has *ne, ea si matre uteretur,* thus introducing *ne,* although not in the right place.

VI. § 17. ..... *atque in ipsa natura.*] A. B. omit *in* and so Class., who remarks—*in,* quod vulgo ante *ipsa* inseritur, non agnoscunt praestantissimi libri: recte: nam sic facilius genitivus *hominum* etiam ad *naturam* refertur, quad ratio postulat.—I take the very opposite view. If we retain *in* the construction is clearly—*Quod positum atque infixum est in communibus hominum sensibus atque in ipsa natura hominum*—but if we omit *in* the connection of *natura* with *hominum* is no longer necessary, and we might regard *natura* as the instrument—this sentiment which has been riveted in the feelings of all men alike and riveted by nature.

VI. § 17. ..... *qui ad hominum pericula defendenda adiungerer.*] So A. B., Class. and Baiter. The MSS. vary much in details, but most edd. have *quum ad amici pericula depellenda adhiberer;* but *amici* is out of place, for—1. Cicero nowhere speaks of Cluentius as his friend. 2. The fact that he was endeavouring to protect a friend is the very circumstance which would have justified him in being more severe upon Sassia.—Hoc dixit orator, "Quam legem humanae naturae insitam omnes cognitam habent, eam ego non noverim, quem ipsum vitae institutum, quem proprium causarum dicendarum studium ad naturales hominum sensus et affectus penitus perspiciendos vocat?"—*Class.*

VI. § 18. ..... *conflatum et perfectum.*] A. B. and several other MSS. have *profectum,* which is adopted by Class. and Baiter, and, in itself, affords a good meaning. According to the reading I have preferred, *conflatum* is the crude metal heated in the furnace in order to be forged or smelted, *perfectum* the finished work produced from it.

VI. § 18. ..... *sed ea vero sic agit, ut prorsus reticere nullo modo possit.*] i. e. But she is acting in such a manner that in no way is he able altogether to refrain from publishing her guilt. Sassia is the nominative to *agit,* Cluentius to *possit,* the verb *reticere* is used with direct reference to *sileret* and *taciturnitate* in the preceding clause. The meaning is so obvious that any explanation may seem unnecessary, but Classen, strangely, seems to have entirely gone astray as to the force of this reading; he says that *egit* would be required, although it is evident that Cicero is speaking of the exertions which Sassia was actually making in order to procure the

conviction of her son, and he takes it for granted that Sassia is the nominative to *possit*. The MSS. vary much. Many have *sed vero*, omitting *ea*, which may be a gloss:—B. E. and others have *agit:* A. D. and others have *agitur:* A. B. *reticeri:* all others *reticere*. The reading adopted by Class. and Baiter—*sed vero sic agitur ut prorsus reticeri nullo modo possit*—appears to me in every way inferior to that of Orelli, which I have retained.

VI. § 18. ..... *est adornata ..... instruitur ..... comparatur.*] The figurative language is taken from military affairs—equipped—marshalled—kept together and supported. So in the next sentence, *instruit testes*—marshalls an array of witnesses.

VI. § 18. ..... *opibus et copiis.*] *Opes* seems to denote, properly, wealth in money or property; *Copiae* is more comprehensive, and includes all the power and influence, from whatever source derived, which we bring to bear upon an object.

VI. § 18. ..... *squalore huius et sordibus.*] It is scarcely necessary to remind even the young scholar that the moral feeling which prevailed in a Roman court of justice, was entirely at variance with the principles which rule our own. Among the Romans, when an individual was accused of any great offence, his exertions were not confined to the collection of evidence by which he might disprove the charge, but he sought by all manner of devices to work upon the feelings and excite the compassion of the judge and jury, not with the view of mitigating the penalty if he was found guilty, but with the hope of inducing them to acquit him altogether. Hence it became an established custom for a citizen, when impeached of any crime, to appear in public, clad in old, foul, beggarly raiment (*sordidatus*), unwashed and uncombed, in order that he might soften the hearts of all beholders by his miserable aspect. If we are to draw a distinction between *squalore* and *sordibus*, the former will refer to the neglected state of the hair, face, &c., the latter to the filthy and beggarly dress—but this is perhaps fanciful.

VI. § 18. ..... *temere a nobis illam appellari putatote.*] Here *appellare* is used in the sense to accuse, to attack: we have another example in Cic. de Off. I. 25. § 89.

Cavendum autem, ne maior poena quam culpa sit, et ne iisdem de causis alii plectantur, alii ne appellentur quidem.

VI. § 18. ..... *sin erunt.*] So A. B. C. Almost all MSS. and edd., except Class. and Baiter, have *sin autem erunt*. The difference is scarcely worth noticing.

VII. § 19. ..... *vi ac necessitate.*] So A. B. and several MSS. Many others have *vi et necessitate*. A like variation is found below (§ 20), in *oculis ac manibus*, where A. B. have *oculis et manibus*. We shall not notice such discrepancies again, but we may state generally that it will be found impossible, without entirely rejecting the authority of MSS., to establish any well defined principle of distinction between *ac* and *et*, in so far as the signification of the words connected is concerned. The common rule which forbids the use of *ac* before a word beginning with a vowel, or with *c* or *q*, seems to be closely observed.

VII. § 20. ..... *deprehendisset.*] See note on XIX. § 53.

VII. § 20. ..... *evitaret.*] So A. B. and Class. Most MSS. and edd. have the simple form *vitaret*, which is in itself unobjectionable; but *evitaret* will give greater force to the expression, since it will indicate that Cluentius took the strong step of impeaching his own step-father in order that he might escape at once and for ever from the danger by which he was threatened.

VII. § 20. ..... *illius iudicii.*] The trial of Oppianicus.

VII. § 20. ..... *ad Staienum.*] Here, as in almost all places where uncommon proper names occur, the MSS. present a great variety of forms. A. B. have *Scaienum*—others *Stalenum*, which has been adopted by many edd.—C. and several others have *Staienum*, and this seems on the whole most likely to be the true form.

VII. § 21. ..... *Num. Magium.*] Many MSS. have here and elsewhere in this speech, *Cn. Magium*. It is almost unnecessary to remark that, in this and similar cases, such variations are of no importance.

VII. § 21. ..... *captus apud Asculum.*] Asculum Picenum, the chief town of the Piceni, situated on the right bank of the Truentus (*Tronto*), less than 20 miles from its mouth. There is a modern *Ascoli* of considerable importance on the same site, which is the frontier town of the Papal Territory towards that province of Naples known as the *Abruzzo Ultra*. This Asculum is chiefly celebrated in Roman History as the place where the standard of revolt was first raised by the Italian States in the Social War, B. C. 90. Thus Velleius (II. 15.)

Quippe L. Caesare et P. Rutilio consulibus, universa Italia, cum id malum ab Asculanis ortum esset, quippe Servilium praetorem Fonteiumque legatum occiderant, ac deinde a Marsis exceptum in omnis penetrasset regiones, arma adversus Romanos cepit.

It was besieged and taken, after an obstinate resistance, by Q. Pompeius Strabo, when Consul, B. C. 89, who treated the inhabitants with all the cruelty which characterised the struggle. His triumph is recorded in the Fasti Capitolini as having been celebrated at the end of December in B. C. 89. Cn. Pompeius Strabo Cos. De Asculaneis Picentibus an. dclxiv., vi. K. Ian.

Asculum Picenum must be carefully distinguished from Asculum in Apulia, on that branch of the Via Appia which led to Canusium, hence termed Asculum Apulum, now called *Ascoli di Satriano*, and also celebrated in Roman History, on account of the great battle fought in the vicinity with Pyrrhus B. C. 279.

VII. § 21. ..... *inter sicarios.*] This is a technical expression to denote the court where cases of assassination were tried. So below, LIII. § 147.—*Haec quaestio sola ita gubernatur? quid M. Plaetorii et C. Flaminii inter sicarios?* M. Plaetorius and C. Flaminius being the judges who presided in the court where assassins were tried. We have the phrase more fully in De Finn. II. 16.—*An tu me de L. Tubulo putas dicere? qui, quum Praetor quaestionem inter sicarios exercuisset.*—See also Pro Rosc. Am. 32. Philipp. II. 4.

VII. § 21. ..... *venit index ... neque obscurus neque incertus.*] *Obscurus* refers to the personal character of the *index*, *incertus* to the nature of the information which he supplied. He was a known man (*non obscurus*), therefore his statements could be believed, and these statements were distinct and unequivocal.

VII. § 22. ..... *quem tamen unum.*] *Tamen* is found in A. B. C. E. and many other MSS., some have *tum*, others *tantum*. *Tamen* is undoubtedly correct—Dinaea represented to her relations that, bereaved as she was, *yet, after all*, one son was left, and him she implored them to seek out and restore to her. We find the same use of *tamen* in the Divinatio XV. § 42.—At ne is quidem tantum contendet in dicendo quantum potest, sed consulet laudi et existimationi tuae: et ex eo quod ipse potest in dicendo aliquantum remittet, ut tu tamen aliquid videare—i. e. that you, weak as you are, may after all appear to be something. Classen quotes other examples from—Pro Quinct. XXVI. § 80.—Pro Rosc. Amer. III. § 8.—XXXVI. § 104.—Pro Ligar. XVI. § 34.

VII. § 22. ..... *filio IIS CCCC millia.*] So C. Here as in almost all cases where numbers are concerned, the greatest confusion prevails in the MSS. We have followed Orelli in adopting the reading of the Turin Palimpsest which, being our oldest authority, is, in such a matter, most likely to be right. Moreover, the sum given in our text amounting in round numbers to £3300 sterling is, in the circumstances, reasonable and probable. A. B. have *quadraginta millia*, or £330, which is too small; most MSS. have IIS CCCCIↃↃↃↃ, i. e. *decies*, or £8300, which seems too large, but is adopted by Schütz, while Lambinus introduced IIS CCCCIↃↃↃↃ *millia*, i. e. £8,300,000, which is altogether monstrous.

VII. § 22. ..... *his diebus paucis.*] So the MSS. Orelli introduced *iis*, which is a conjecture of Garatoni, and is quite unnecessary.

VIII. § 23. ..... *per quendam Gallicanum.*] The epithet *Gallicanus* must here denote connected with Gaul or of Gaulish extraction. The more precise and elaborate interpretation given by Lemaire, a native of Gaul who had settled in Italy, may be true, but is founded upon a conjectural restoration of a mutilated fragment of the speech *In Pisonem*, quoted by Asconius. In another passage *Gallicanus* is applied as an epithet to certain legions quartered in Gaul. (In Cat. II. 3.)

VIII. § 23. ..... *adolescentis suosque.*] So A. B. C., Classen and Baiter. All other MSS. and edd. have *adolescentis propinquos suosque*, &c., but *propinquos* is probably a gloss or correction introduced by some half-learned transcriber who was puzzled by the construction.

VIII. § 23. ..... *A. Aurius, vir fortis et experiens, et domi nobilis.*] A. B. and some other MSS. omit the praenomen A; others have M. Aurius. Classen maintains that this Aurius is the same person as the A. Aurius Melinus of Chap. V., who married first Cluentia and then Sassia. But this opinion appears to me quite untenable, for,

1. It is evident from the language here employed by Cicero that he is introducing this Aurius for the first time, and not referring to a personage previously brought upon the stage.

2. He never would have spoken so respectfully—*vir fortis et experiens*, of the incestuous husband of Sassia, whom he (V. § 11.) characterises simply as an *adolescens* of excellent character *at the time* of his union with Cluentia. The death of the elder Cluentius took place B. C. 88 (see above V. § 11), his daughter was married to Melinus soon after (*brevi tempore*), and the impure passion of Sassia did not remain long concealed (*neque id ipsum diu*). The disgraceful union of the mother-in-law with

her son-in-law must have taken place long before the events which Cicero here details (B. C. 83), and consequently the reputation of Melinus must have been destroyed.

3. In the latter part of this chapter Cicero expressly states that Oppianicus found means to make away, not only with that Aurius who had threatened to impeach him, but also with "alterum Aurium." But this "alter Aurius" must be A. Aurius Melinus, whose murder is again referred to in VIII. § 26, no other Aurius having been mentioned except the sons of Dinaea, both of whom were now dead.

4. The circumstance that A. Aurius Melinus is styled *adolescens* at the time of his marriage with Cluentia, is in no way incompatible with his being the father of a son, C. Aurius, who is here named as having been put to death. The age of this C. Aurius is not stated, and he may have been a boy, the issue of the marriage of A. Aurius with Cluentia. At all events, the great facility and frequency of divorce, at this period, does away with any difficulty in the supposition that A. Aurius Melinus may have been married before his union with Cluentia. It is well known that the term *adolescens* is applied to persons upwards of forty.

VIII. § 23. ..... *propinquus.*] C. has *perpropinquos*. B. *perpropinquus*, and so Class. and Bait.

VIII. § 24. ..... *Q. Metelli.*] Quintus Caecilius Metellus Pius, son of that Q. Caecilius Metellus who won the title of *Numidicus* in the war against Jugurtha. Metellus Pius was praetor B. C. 89, and took an active part in the Social War. He was obliged to fly from Italy during the domination of Marius and Cinna, but joined Sulla at Brundisium in B. C. 83, and did good service in the struggle which followed. This is the period referred to in the text. Metellus was the colleague of Sulla in the consulship (B. C. 80), celebrated a triumph in B. C. 71, along with Pompey, in honor of the close of the war in Spain against Sertorius, and subsequently became Pontifex Maximus. He was styled *Pius* in consequence of the devoted affection which he manifested towards his father, when the latter was persecuted and driven into banishment by Marius and Saturninus (B. C. 100). He is characterised by Cicero as—Metellus homo sanctissimus modestissimusque omnium (Pro Archia V. § 9).

VIII. § 25. ..... *nunquam se iudiciis, nunquam legibus.*] These words are omitted in A. B., are retained by Classen, and bracketed by Baiter.

VIII. § 25. ..... *quo sequestre.*] According to the testimony of grammarians and jurists, which is fully borne out by quotations from the earliest writers, the word *Sequester* was originally employed to denote a person in whose hands disputed property was deposited, and who retained it in trust until the pretensions of the different claimants were adjusted. The persons who deposited the property were said, technically, *sequestro ponere* or *in sequestro ponere*, and the property itself to be *sequestro positum* or *in sequestro depositum*. Thus Plautus, Rud. IV. iii. 70.

TRACH. Tu istunc (sc. *vidulum*) hodie non feres nisi das sequestrum
aut arbitrum
Quoius haec res arbitratu fiat—

and a few lines lower down—

TRACH. Non probare pernegando mihi potes, nisi pars datur,
Aut ad arbitrum reditur, aut sequestro ponitur—

and again in the Mercator, IV. iii. 36.

DOR. Non tu scis quae sit illa? LYS. Imo etiam scio,
De istac sum iudex captus. DOR. Iudex! iam scio:
Huc tu in consilium istam advocavisti tibi.
LYS. Imo sic sequestro mihi data est.

In the time of Cicero, when political and judicial bribery had been reduced to an organized system, *sequestres* were persons in whose hands money was deposited by the bribers in trust for the bribed, neither party being disposed to rely upon the promises of the other. In this sense it is used in the passage before us and in many others, e. g. In Verr. Act. I. 12, and note of Ascon.—Pro Planc. XIX.

By late writers *sequester* is employed in the general sense of a mediator, as in Senec. Consol. ad Helv. 12, and this seems to be the force of the epithet *sequestra* applied to Pax by Virgil, Æn. XI. 133.—

Bis senos pepigere dies, et pace sequestra
Per silvas Teucri mixtique impune Latini
Erravere iugis .....

Grammatically, we have *sequester* a substantive of the second and also of the third declension, and *sequester—ra—rum*, an adjective. The etymology is doubtful, at least it seems very difficult to connect the meanings which it bears with the verb *sequi*.

See Festus, p. 339, ed. Müller. Aul. Gell. N. A. XX. 11. Modestin. Digest. L. xvi. 110.

VIII. § 25. ..... *terrebantur.*] So all MSS. and edd. except A. and B., which have *tenebantur*. Classen argues elaborately in favour of this reading, but I am unable to see any force in his reasoning. The meaning affected by *terrebantur* is obvious and satisfactory. Baiter follows Classen.

VIII. § 25. ..... *in causa iudicioque.*] The trial of Oppianicus.

IX. § 27. ..... *Oppianici domum, viri sui sanguine redundantem.*] E. omits the word *domum*, two Palatine MSS. have *dexteram* instead of *domum*. Baiter is not satisfied with either *dexteram* or *domum*, because, he says, the husband of Sassia was not killed by the hand nor in the house of Oppianicus. But this is hypercritical. Oppianicus is represented as having procured the death of Aurius—*proscribendum interficiendumque curavit*—who therefore, without any violent hyperbole, might be said to have been murdered by Oppianicus, and the mansion of the latter might be represented, figuratively, as deluged with the blood of his victim.

IX. § 27. ..... *domo sibi quaerendum remedium.*] That he must seek in his own family the means of removing the obstacle to his marriage, i. e. by the murder of his own children.

IX. § 27. ..... *Teani Apuli.*] Teanum Apulum, so called to distinguish it from Teanum Sidicinum (*Teano*) in Campania, was situated in Apulia, on the right bank of the river Frento (*Fortore*), 18 miles S. E. from Larinum. It was at a short distance from a large salt-water lake which runs far into the land, the Lacus Pantanus (*Lago Lesina*). The site of Teanum Apulum has been fixed at a place now called *Civitate*.

A. B. have *Teano*. Baiter brackets *Apuli*, which may be a gloss.

IX. § 27. ..... *ludis publicis.*] A. B. omit *publicis*. It is retained by Classen and bracketed by Baiter.

IX. § 28. ..... *familia nuntiavit.*] So almost every MS. and so Lambinus. All other edd. from Camerarius (1540) to Orelli have, on the authority of E., *renuntiavit*—a change altogether uncalled for.

IX. § 28. ..... *spe optime confirmato.*] So A. B., Class. and Baiter. All other MSS. and edd. have *optima*. Classen argues that there is no question here with regard to the quantity or quality of the hope entertained by Sassia. The hope she had formed was fixed and definite, namely, the hope of enjoying great wealth and ease if the children of Oppianicus were removed. Their destruction having been accomplished, she marries, rejoicing that her hope was strengthened and established in the most satisfactory manner. After all, *spe optima* might, without any violence, bear the same meaning, and is perhaps more natural. Lambinus has *confirmata*, which is found in several MSS.

IX. § 28. *Ita quod ceteri.*] Orelli, following D. E., has *itaque ceteri*. The reading in the text seems to be true. Classen has the following note.

Sic habent codd. plures et meliores et edd. antiquae, quod a novissimis editoribus, ab Ernestio, cui *quod* spurium videbatur, a Schützio qui—*quum ... soleant* reposuit, et ab Orellio, qui *itaque ceteri* praetulit, non debebat turbari. Illi enim omnes non attenderunt ad eum usum coniunctionis *quod*, quo ad exponendam diversarum inter se partium oppositionem adhibetur; maxime ubi ex numero aliquo *ceteri* opponuntur *uni* aut *paucis*, qui inde eximuntur. Hac eadem ratione infra LXVII. § 190, vera loci forma quam ex codd. restituemus, haec est—*Ita quod apud ceteros, saepe fieri divortia videmus: haec mulier*, &c., item Pro Fonteio IX. § 20.—*quod ceterae pro religionibus suis bella suscipiunt, istae contra omnium religiones.*

The English word which represents the meaning of *quod* when used in this manner, is *while*.

IX. § 28. ..... *iucundius.*] The MSS. and edd. are pretty equally divided between *iucundius* and *iucundum*. A. B., followed by Classen and Baiter, have the latter, Orelli the former, which, on the whole, I prefer.

X. § 29. ..... *de eo, quem omnes oderant.*] So A. B. Most MSS. and edd. omit *omnes*. We followed Classen and admitted *omnes* into our text, but now feel convinced that it ought to be left out. It appears, perhaps, at first sight, to be scarcely judicious on the part of Cicero to state that the jurors who tried Oppianicus hated the man on whose guilt or innocence they were required to decide. But *oderant* has here the force of an imperfect, and implies that, as the trial advanced, they were gradually becoming filled with detestation of his reckless villainy, and were arriving at the conclusion that he was *omni supplicio dignum*. It will be observed that the orator contrasts most carefully and minutely the position occupied by the jurors whom he was addressing with that which had been occupied by those before whom Oppianicus was tried.—

Vos auditis de eo in quem iudices non estis.	Illi audiebant de eo, de quo iurati sententias ferre debebant.
De eo quem non videtis.	De eo, cuius praesentis ... vultum intuebantur.
De eo quem iam odisse non potestis.	De eo quem oderant propter audaciam.
De eo, qui et naturae et legibus satisfecit.	De eo quem omni supplicio dignum esse ducebant.
Auditis non ab inimico.	Audiebant ab accusatoribus.
Auditis sine testibus.	Audiebant verba multorum testium.
Auditis, quum ea, &c., breviter a me strictimquo dicuntur.	Audiebant, quum unaquaque de re a P. Canutio, homine eloquentissimo, graviter et diu diceretur.

Now, it is evident that the carefully maintained contrast exhibited in the above clauses would be destroyed if we were to insert *omnes* before *oderant*, and thus introduce the community at large.

Any one who reads the note of Classen will see that he arrives at exactly the opposite conclusion.

X. § 29. ..... *a P. Canutio.*] Cicero, in the Brutus (LVI. § 205), speaks of Canutius in very complimentary terms.

Sulpici orationes quae feruntur, eas post mortem eius scripsisse P. Canutius putatur, aequalis meus, homo, extra nostrum ordinem, meo iudicio disertissumus.

Priscian (VIII. 4. tom. I. p. 369. ed. Krehl.) has preserved a single sentence of this orator to exemplify a meaning of *admirari*.—Canutius: *turpe est propter venustatem vestimentorum admirari, ut propter turpissime vitam actam non contemnere:* admirari θαυμάζεσθαι.

X. § 30. ..... *propiora huius causae.*] A. B., E. and several other MSS. have *propriora*, which has, however, not been adopted by any good editor. *Causae* is in the dative and *huius* refers to Cluentius. *Huiusce*, which is given by Classen as his own conjecture, but which, according to Baiter, is found in A. B., seems unnecessary.

X. § 30. ..... *amita huius Aviti.*] This is a misprint for *Habiti*. See note at commencement of I.

X. § 30. ..... *emori.*] So A. B., Class. and Baiter. All other MSS. and edd. have *mori*. Classen says—non negligenda videtur optimorum codd. scriptura, quae praecedentis verbi terminatione facile potuit obliterari, pro vulg. *mori*. *Emori* autem Ciceroni est misere mori. Sic infra XIV. § 45. Pro Rab. Post. X. § 20. But the misere is fully expressed in the text by the words *maximo cum dolore*, and although *emori* would have been appropriate enough in a simple narrative, it seems out of place in a reported exclamation.

XI. § 31. ..... *fraterno parricidio*, and again, in XI. § 32. ..... *multa parricidia.*] There can be little doubt that the word *Parricidium* originally denoted, specially, the murder of a parent, and it certainly was used in this restricted sense in all periods of Roman History. It is equally certain that, from a very remote epoch, *Parricidium* was employed to denote the crime of wilful murder without any reference to the consanguinity of the parties (See Paul. Diac. s. v. *Parrici Quaestores*). This extension of the term has been explained on the supposition that in the ruder ages of Italian society, the punishment of ordinary murder was left to private revenge, as among Arab tribes, and that the law took no cognizance of homicide except when a parent was the victim, in which case the crime was regarded as so terrible and portentous that, if not expiated by the blood of the offender, it would have brought down the wrath of heaven upon the whole community. The early legislators, in order to put an end to violence and outrage, ordained that wilful murder should be punished with death, just as if it were actually *parricidium*, and hence the words quoted from the law of Numa, (Paul. Diac. l. c.) SI QUEM HOMINEM LIBERUM DOLO SCIENS MORTI DUIT, PARRICIDAS ESTO, i. e. let him be regarded in the same light and pay the same penalty as if he were actually a parricide. See *Rein*, Das Criminal Recht der Römer, p. 401.

XI. § 31. ..... *ut una illud, quod erat*, &c.] So A. B., D. and several other MSS. and so Class. and Baiter. Orelli, following other MSS., has *ut una illa et quod*, &c., but, as Classen justly observes, the latter reading would indicate that the death of the mother was as much an object to Oppianicus as the death of the child, while it is evident that he had no interest in getting rid of Auria except to cause the destruction of the unborn infant.

XI. § 31. ..... *hanc ab natura propriam lucem.*] So all MSS. and edd. except A. B., which omit *propriam*, and are followed by Class. and Baiter. There is nothing startling or offensive in the word, and the expression, without it, would be somewhat abrupt.

XI. § 31. ..... *nihil ei clausum.*] These words are omitted in A. and bracketed by Baiter, (Classen seems to have overlooked this).

XI. § 32. ..... *heredibus secundis.*] A. B. omit *secundis*, which is retained by Classen and bracketed by Baiter.

XI. § 32. ..... *mortem atque cruciatum.*] Quintilian (I. O. VIII. 4. § 10.) in quoting this passage, gives—*vim atque cruciatum*, offended probably by the position of *cruciatum* after *mortem*. But Garatoni quotes from In Verr. Act. II. ii. § 138.—*ad mortem atque cruciatum rapuisti.*

XI. § 32. ..... *plures necaret.*] A. B. and some MSS. of Lambinus have *multos necaret*, and so Class., but all other MSS. and edd., including Baiter, have *plures*. It appears to me that *plures* is undoubtedly correct. Cicero, in the first part of his sentence, speaks generally and vaguely—the rest of mankind do not seem to be able to entail upon themselves the guilt of many murders (*multa parricidia*) when dealing with individuals, Oppianicus has been found, who could kill (at all events) *more than one* in a single body. When speaking of the definite crime of Oppianicus, it would have been absurd to have stated that he had murdered many (*multos*) in the person of one individual, but it was strictly true that, in killing Auria, he murdered more than one (*plures*).

XII. § 33. ..... *filium faceret.*] Observe the force of the tense in *faceret:* he was in the act of making his will, but before completing the act he first, &c., &c.

XII. § 33. ..... *ei testamento legat grandem pecuniam a filio.*] According to the Roman Law in the time of Cicero, no legacy (*legatum*) could be bequeathed except *through* the *Heres* named in the will, who acted as sole executor and was bound to pay it. Hence, a testator was said to bequeath a legacy (*legare*) AB HEREDE. In the present case, Num. Magius bequeathed his fortune, in the first instance, to the son whom he expected to be born, and left a large legacy to his widow to be paid by that son, as executor, if he succeeded. Failing a son, he bequeathed his property to his nephew, the younger Oppianicus, but in this case the widow was to receive nothing. The heir named first in a will was termed *Primo gradu scriptus heres*, the person who, failing him, was to succeed, *Heres substitutus*, or, as Cicero here calls him, *Secundus heres*. There might be any number of these *Heredes substituti* named in succession, and hence the expressions *Heres substitutus secundo—tertio—quarto*, &c., *gradu*.

XII. § 33. ..... *si qui natus esset.* Here and a few lines lower down (§ 34), where the same expression occurs, A. B. have *erit*—if this is true, we must suppose that Cicero is giving the very words of the will without seeking to combine them with the construction of his sentence.

XII. § 34. *Quid de Oppianico suspicatus sit ... quid iudicarit ...*] *Suspicari* is to surmise (generally something evil)—*Iudicare* is to form a deliberate opinion. The suspicious forebodings of Magius were indicated by the singular provision in his will—his deliberate opinion of Oppianicus by the fact, that he did not name him as a guardian of the child whom he expected to be born.

XII. § 34. *Nam, quum eius filium faceret heredem.*] A. B. C., Class. and Baiter have *Nam cuius filium*, in which case the *cum* in the apodosis follows more naturally. But it seems very doubtful whether *faceret* in the subjunctive could follow *cuius*, and the examples quoted by Classen as parallel certainly do not apply.

XII. § 34. ..... *ut illum Magium intelligatis non longe animo prospexisse morientem.*] So A. B. and Class. All other MSS. and edd., including Baiter, omit *non*. The introduction of *non* may unquestionably be defended, and may be interpreted so as to give additional force to the passage, although this, at first sight, is not obvious. Magius entertained some apprehensions of foul play on the part of Oppianicus, and took such measures as he thought would baffle him. "But," says Cicero, "mark what Oppianicus did, in order that you may understand that Magius, after all, was but short-sighted." If Magius had seen clearly what was likely to follow his death, he would have taken more effectual precautions against the villainy of Oppianicus. As matters turned out he did *not* see far (or at least far enough) before him, and hence the schemes of Oppianicus proved successful.

This is the explanation given by Classen, and it is most ingenious and acute. It may be doubted, however, whether such a meaning is not too subtle for a public speaker addressing a jury. Cicero is not refining here. He wishes simply to impress upon the jury that Magius had formed a very bad opinion of Oppianicus, and that the event had fully proved that he was not mistaken. If we omit *non*, the force of the passage will be—

mark what Oppianicus did, in order that you may understand that Magius saw far into the future, when he deemed it necessary on his death-bed to take precautions against his villainy.

XII. § 34. ..... *quae tum ex tabulis*, &c.] Here *tum* is emphatic—at the time when the cause of Oppianicus was tried. So at the end of XIII.—*Ac tum in Oppianici causa*, and XIV. § 40.—*id quod ipsius tabulis tum est demonstratum.*

XII. § 35. ..... *decem illis mensibus.*] Ten lunar months, according to the belief of the Romans, was the regular period of gestation, and Magius had solemnly (*obtestatione*) requested his wife to remain in the house of her mother-in-law until that period had expired. Thus Ovid when speaking (Fast. I. 33.) of the division of the year by Romulus into ten months—

Quod satis est utero matris dum prodeat infans,
Hoc anno statuit temporis esse satis.

XII. § 35. ..... *quinto mense post viri mortem.*] This was a violation of common decency. For every widow was expected to mourn during ten months for the decease of her husband. This circumstance also is alluded to by Ovid in the lines which immediately follow those quoted above—

Per totidem menses a funere coniugis uxor
Sustinet in vidua tristia signa domo.

XIII. § 36. ..... *Asinii Larinatis.*] Great variations in the MSS. as to the name of this person. *Asinius* is the form adopted by Orelli and most edd. *Asuvius* is preferred by Class. and Baiter. So, in like manner, we are free to choose between *Avillius; Avilius; Aurilius; Arulius; Avulius; Aiulius; Aulius;* and several other forms.

XIII. § 36. ..... *accommodatus.*] So almost every MS., (there is a doubt about C.) but the great majority of edd. have, without any good reason, substituted *accommodata*, and so Baiter. The phrase occurs again, XXIX. § 79. *homo...ad inflammandos animos multitudinis accommodatus.*

XIII. § 36. *Ratio...res.*] *Ratio* the plot or plan, *Res* the execution of the plan, as explained in the next sentence.—*Inire consilium...Perficere rem.*

XIII. § 36. *Inire enim id consilium.*] A. B. and several other MSS. omit *id*, and so Class. and Baiter. It is objected that *id* is out of place, since the nature of the plot had not yet been described; but, on the other hand, *Ratio*, in the preceding sentence, indicates that a definite plot had been formed. A. B. E. have *iniri*, and so Class.

XIII. § 36. *Hos vestigiis Oppianicus consecutus est.*] A. B. and some other MSS. have *secutus est*, and so Class., but the common reading is better, since it implies that Oppianicus not only followed in their track but joined them, which we learn from what follows was actually the case.

XIII. § 37. ..... *atque ibi pernoctaret, ibi diem*, &c.] So A. B. and Class. Most MSS. have *atque ibi pernoctaret, et ibi diem*, but the *et* is

decidedly offensive, and may have grown out of the last syllable of the preceding word *pernoctaret*. A few MSS. have *et ibidem posterum commoraretur*. Lambinus, combining these two readings, introduced the conjectural emendation, *atque ibi pernoctoret, et ibidem diem posterum commoraretur*, which was adopted by Ernesti, Weiske, Schütz and Orelli.

C. has *atque ubi pernoctaret ibi diem p. c.*, which, by Orelli, is termed "pessima lectio," but has been adopted by Baiter and is probably true.

XIII. § 37. ..... *brevi illo tempore.*] i. e. within a short period after these transactions.

XIII. § 37. ..... *arenarias quasdam.*] Cicero, in all probability, here indicates some of these excavations made for the purpose of obtaining the volcanic sand now called *pozzuolana*. This has been extensively used for building purposes from a very remote epoch, and thus the almost endless maze of the famous Catacombs has been formed.

XIII. § 38. ..... *qui tum erat triumvir.*] That is one of the *Triumviri Capitales* who exercised summary jurisdiction over slaves, foreigners, and malefactors of the lowest class, when guilty of trifling offences, and like our police magistrates, made the preliminary investigations in cases of murder or serious breaches of the peace. Their tribunal was placed in the Forum beside the *Columna Maenia*, which is the *columna* alluded to below, and the circumstance that Manlius had, in early life, been himself often dragged hither as a malefactor, proves how disreputable his position and pursuits must have been at the outset of his career. With regard to the origin and name of the *Columna Maenia*, see Pseud. Ascon. in Divin., XVI. § 50, and Plin. H. N. XXXIV. 5. VII. 60, but these statements cannot be reconciled except upon the supposition that there were two pillars bearing this appellation. See also Schol. Bob. in Orat. Pro Sextio. LVIII.

XIII. § 38. ..... *nullo teste.*] There is no inconsistency here with what is said below, § 39, *testibus multis ..... probabatur*. No one had appeared to accuse Avillius; when goaded by the stings of conscience he made a full confession; but after he had disclosed the facts of the case, his testimony could be confirmed by many witnesses, and especially, we may suppose, by the two persons brought in to attest the forged will, who are not represented as having been accomplices.

XIII. § 39. ..... *in discordiis civitatis.*] The civil strife of Marius, Sulla, Cinna, Carbo, Lepidus, Catulus, &c., from B. C. 88.—B. C. 78.

XIII. § 39. ..... *in quo, inter allegatos.*] The reading and interpretation of this passage have given rise to much discussion. A. B. have *in quo alligatum*, but the great majority of MSS. have *in quo inter allegatos*, for which some substitute *alligatos*.

1. Turnebus (Advers. V. 23.) adopts *alligatos*, and explains the word to mean *culpae affines*, i. e. The name of Oppianicus stood first amongst those implicated in the crime according to the information of Avillius. That *alligatos* will bear this meaning, is proved by referring to Cic. Epp. ad Q. F. II. 3.—Pro Cluent. LIV. § 148.—Pro Rabir. Post. VI. § 14.—VII. § 13.

2. J. F. Gronovius (ad Liv. XXXVI. 11.) adopts *allegatos*, connecting it with *constabat*, and supposes the *allegati* to be the commissioners employed

to take the evidence of Avillius. The commissioners were agreed upon this point (viz.), that the name of Oppianicus stood foremost in the depositions of Avillius.

3. Orelli connects *inter allegatos* with *primum Oppianici nomen*, and understands the *allegati* to be persons provided by Oppianicus to assist in contriving and executing the murder of Avillius—an explanation approaching closely to that of Turnebus.

4. Classen adopts the reading of A. B., *in quo alligatum Oppianici nomen primum esse constabat*, and explains *alligatum* to signify *testimonio obstrictum et convictum*. He is followed by Baiter.

5. By the writers of the first and second centuries *allegare* is frequently used in the sense of to bring forward in the way of proof or defence—thus *allegare exempla; allegare decreta; in deprecanda poena allegare aliquid*, &c. If we could adopt this meaning, *inter allegatos* might be fairly interpreted, the name of Oppianicus stood first among those mentioned by Avillius in confirmation of his story. It does not appear, however, that there is any other example of *allegare* in this sense among the writers contemporary with or more ancient than Cicero.

XIV. § 40. ..... *per quem interfecerat plurimos.*] These words, although very suspicious, seem to be found in all MSS.—They are bracketed by Baiter.

XIV. § 40. ..... *pharmacopolam circumforaneum.*] i. e. an itinerating quack. There can be no doubt as to the reading, although A. B. have *foranum* and most other MSS. *circumforanum*.

XIV. § 40. ..... *duobus millibus IIS.*] This is the reading which we extract from the words *duo millia*, which are found in A. B. and in the great majority of MSS. Lambinus, Orelli, and most edd. before Class. and Baiter, have *IIS quadringentis*, which rests on no satisfactory authority.

XIV. § 41. ..... *qui gener eius fuisset.*] Oppianicus had married *Magia*, daughter of Dinaea. See Proleg. § 4. N. The use of the subjunctive here indicates that *qui* is explanatory—inasmuch as—the orator points out to his auditors that Oppianicus got the will of Dinaea into his possession in consequence of his connection with her as son-in-law. So in the sentence immediately preceding, *qui properaret* denotes because or inasmuch as he was hastening. In the last example A. B. have *cum* instead of *qui*, which is evidently a gloss and is not adopted by Class.

XIV. § 41. ..... *decuriones universi.*] *Decuriones* is the word generally employed to denote the Senators or Town-councillors of Coloniae and Municipia, the chief magistrates being termed *Duumviri* or *Quatuorviri*, &c., as the case might be. See VIII. § 25.—XV. § 43.

XIV. § 41. ..... *nemo rationem.*] i. e. any pecuniary transaction.

XIV. § 41. ..... *nemo illum aditu*, &c.] We have here a climax—*aditu*, no one would visit him—*congressione*, no one would make an appointment with him—*sermone*, no one would converse with him—*convivio*, no one would sit at table with him.

XIV. § 41. ..... *aspernabantur ... abhorrebant ... fugiebant.*] The first of these words implies contempt and scorn, the second loathing, the third terror.

XIV. § 42. *Erat ... erat: sed tamen erat.*] So A. and several other MSS. B. with other MSS. omit the second *erat*, but, in this position, the word was much more likely to have dropped out than to have been interpolated.

XIV. § 42. ..... *pieque accusaret*] i. e. Fulfilling the duty which he owed to his native country and fellow-citizens.

XIV. § 43. ..... *illi condemnari.*] So A. B. and Class. All other MSS. and edd. have *illum*, which is probably right.

XV. § 43. ..... *Venerei.*] The *Venerei* in Sicily, of whom we hear much in the Verrine orations, were a large body of slaves belonging to the celebrated temple of Venus upon mount Eryx, near Drepanum. The great majority of MSS. here have *Venerei*, some have *Venerii*, another form of the same word; while A. B. and one or two others have *Veneri*, which must be regarded as a contraction or corruption of *Venerii*, and by no means as the dative case of *Venus* as Classen will have it.

XV. § 43. ..... *pro loco.*] i. e. In consideration of his social position.

XV. § 44. ..... *infesta atque inimica.*] The word *infestus* denotes general hostility to the wishes and interests of another, *inimicus* personal antipathy.

XV. § 44. ..... *atque audacissimi.*] These words are omitted in A. and bracketed by Baiter. *Audacissimi* is as likely to have dropped out after *avarissimi* as to have been interpolated.

XV. § 45. *Neque enim.*] A. B. omit *enim*. It is retained by Class. and bracketed by Baiter.

XV. § 45. ..... *animum inducere.*] So A. B. and the great majority of MSS. A few have *in animum*, which was adopted by most edd. before Classen, and is in itself unexceptionable, although quite unnecessary. Baiter, following Arusianus Messius, introduced *neque* [*enim*] *legare quicquam eiusmodi matri poterat animum inducere*—but quotations by grammarians and others are always to be viewed with suspicion, as authorities for changing a received text.

XV. § 45. ..... *bona eius omnia ad matrem esse ventura.*] According to the provisions of the Civil Law, in the time of Cicero, the property of an intestate, failing *Sui Heredes*, passed to his *Consanguinei*, i. e. to his brothers and sisters by the same father. But a wife who married with *Conventio in Manum* ranked, in the eye of the law, in matters of inheritance, as her husband's daughter (*loco filiae*), and consequently as the sister (*loco sororis*) of his children. Thus, Sassia had in law the rights of a sister over the property of her son Cluentius, if he died intestate. See Gaius III. § 14.

XV. § 45. ..... *aucta pecunia.*] Classen is probably right in regarding *aucta* as the nominative agreeing with *quae*. He quotes in illustration Pro Rosc. Amer. III. § 8. ..... *spoliis Sex. Roscii hoc iudicio ornati auctique discedebant*, and In Verr. Act. II. V. 31. § 80. *Hac tanta praeda auctus.*

XVI. § 46. ..... *ex municipio Aletrinate.*] Aletrium written also Alatrium, as in Greek Ἀλέτριον and Ἀλάτριον, was in the country of the Hernici, a few miles to the N. of the Via Latina, about 10 miles due E. of Anagnia (*Anagni*) and six miles N. of Ferentinum (*Ferentino*). The modern town *Alatri* is chiefly interesting from the circumstance that the walls which encompassed the ancient city and its citadel still remain almost entire, presenting, perhaps the finest and most perfect example in existence of that very ancient and massive style of building which is now generally termed *Polygonal.*[1] Arpinum (*Arpino*), the birth place of Cicero, where also there is a fine Polygonal wall, lies about 16 miles S. E. from Alatrium, and the proximity of the two towns is alluded to in the next Chapter, (XVII. § 49)—*quod mihi cum Aletrinatibus vicinitatem ... esse sciebat.*

According to Priscian (VII. 14. § 71.) we ought to write *Aletrinati* in the ablative. A. B. have *Larinati*, a manifest blunder.

XVI. § 47. ..... *Cleophanto.*] Observe that the physician is a Greek. Medicine was not at this time regarded as a liberal profession by the Romans, and was for a long period practised chiefly by foreigners.

XVI. § 47. *Servus non incallidus, sed, ... frugi*, &c.] So D. E. and most MSS. and edd. A. B. and the Cod. S. Vict. have *et* instead of *sed*, and so Class. and Baiter. But *sed* is required here. To have said that a slave was *callidus*, or even *non incallidus*, would have been, by itself, reproach, not praise, the *sed* is introduced as a qualification—the slave who was not without craft, BUT at the same time honest and upright.

XVI. § 47. ..... *M. Baebio senatore.*] It is almost unnecessary to say that the MSS. vary much in this name here and below in XIX. § 53 —*Baebio—Bebio—Baebrio—Bebrio—Baevius—Bevius—Bovius*, &c. A. B. have *Bebio*, the great majority of MSS. *Baebrio*, and most edd. write *Bebrio.*

XVI. § 47. ..... *qua diligentia.*] Most MSS. and edd. have *qua dignitate.* B. has *quanta diligentia.* A. *qua diligentia* and so Class., who observes—"In amici periculo defendendo *diligentia* opus est non *dignitate.*" This is perhaps fanciful. Cicero wishes to impress upon his audience that Baebius was a man of honour, of sagacity and of high standing, and therefore one whose advice might be safely followed, and Baebius does not seem to have done more than give advice. Hence *dignitate* is more appropriate than *diligentia.*

XVI. § 47. ..... *aut comprehenderetur res.*] i. e. in order that the truth of the story might be firmly grasped (ascertained). *Comprehenderetur* is not quite synonimous with *deprehenderetur* as some of the older commentators assert.

[1] This epithet is to be preferred to *Cyclopian*, *Pelasgian*, &c, because it denotes a fact without implying a theory.

XVI. § 47. *Ne multis: Diogenes emitur: venenum*, &c.] Classen, following A. B., presents the text of this passage under the following form.

Ne multa: Diogenes emitur: venenum diebus paucis comparatur: multi viri boni quum ex occulto intervenissent, pecunia obsignata, quae ob eam rem dabatur, in manibus Scamandri, liberti Fabriciorum, deprehenditur— and so Baiter.

Classen objects to the common reading, upon the ground that it is absurd to suppose that the poison and the purchase money would both be seized at the same moment in the hands of the same person. But he cannot avoid admitting that this circumstance is distinctly indicated in two passages where there is no suspicion of any corruption. Thus in XVII. § 49. *Nam Cluentius, iudices, primum eius nomen detulit, cuius in manibus venenum deprehenderat*—and again, XIX. § 53. *M. Baebius ... se praesente Scamandrum cum veneno pecuniaque deprehensum esse dicebat.* The truth seems to be that Scamander was seized at the moment when he was in the act of giving the money and receiving the poison in return. Nay more, so far is the vulgate from being indefensible that it appears to me that the force of the passage is entirely destroyed by the reading which Classen adopts. The money without the poison would have been no proof of guilt at all, and it is evident from the words of Cicero, (XVIII. § 50. XX. § 56) that the *deprehensio veneni* was the grand charge against Scamander, and this charge would have been destitute of weight if the poison had not been actually found in his hands.

XVII. § 48. ..... *quis apertior.*] i. e. more evidently guilty.

XVII. § 49. *Integrum consilium.*] Here *consilium* denotes *a jury*, i. e. the whole body of jurors on a trial taken collectively.

XVII. § 49. ..... *simplex in iudicium causa.*] Here *simplex causa* denotes merely a case free from all intricacy. There is no allusion to the rhetorical division of *Causae* into *simplices* and *coniunctae* or *compostae*. See Quintil. I. O. III. 4.

XVII. § 49. ..... *unum crimen.*] This is the reading of a great majority of the MSS., and is much more appropriate here than *verum*, adopted by Lambinus and many edd. upon no satisfactory authority.

XVII. § 49. ..... *cum Aletrinatibus vicinitatem.*] See above, note on XVI. § 46.

XVII. § 49. ..... *patroni omne periculum.*] Of Fabricius, namely, who was the patronus of Scamander.

XVIII. § 50. ..... *ille quidem Scamandrum.*] B. and several MSS. omit *quidem*. It is somewhat difficult to perceive what force the word has here.

XVIII. § 51. *Semper equidem magno cum metu incipio dicere.*] Cicero expresses himself more fully to the same effect in the Divin. XIII. § 41.

Ego, qui, sicut omnes sciunt, in foro iudiciisque ita verser, ut eiusdem aetatis aut nemo aut pauci plures causas defenderint, et qui omne tempus, quod mihi ab amicorum negotiis datur, in his studiis laboribusque consumam, quo paratior ad usum forensem promptiorque esse possim: tamen, ita deos mihi velim propitios, ut, cum illius temporis mihi venit in mentem, quo die, citato reo, mihi dicendum sit, non solum commoveor animo, sed etiam toto corpore perhorresco.

XVIII. § 51. ..... *non possim implere.*] A. B. omit *implere*. It is retained by Classen and bracketed by Baiter.

XIX. § 51. ..... *illi aetati, qua tum eram.*] Thirty-three.

XIX. § 51. ..... *quod timide dicam.*] Classen remarks—Haec non modestiae causa, ut Sylvius interpretatur, Cicero adiecit, sed quod, in tam turpi causa, vix honestum videbatur tantum a se esse praestitum. This view appears to me altogether erroneous. Roman pleaders frequently refused to undertake the defence of a disreputable client; but when a pleader had once undertaken a cause, it was held by all that he was bound to do his best for it, whether good or bad. But Cicero goes farther: he not only says that he actually did his best, but he implies that he made such exertions that no one could think (if he might say so without presumption) that the advocate had failed to make the most of the cause.

XIX. § 52. ..... *hominis in uxoribus necandis exercitati.*] See Prolegg. § 5.

XIX. § 52. ..... *ventura fuisse.*] So A. B., Class. and Baiter. All other MSS. and edd. *ventura esse.*] Classen remarks—*Ventura fuisse* rescripsi cum A. B. pro vulg. *ventura esse*: necessario: nam Canutius in accusatione Scamandri ea tantum, quae perfecto nefario consilio facta forent, commemorare potuit, et in ipsa repetitione eorundem verborum, quae modo ad accusandum prolata erant, ludibrium quoddam inest.

XIX. § 53. ..... *usu.*] Several MSS. have *usui*. We may, if we please, regard *usu* as the archaic form of the dative. A. B. have *usus*, which is a manifest error.

XIX. § 53. *P. Quintilius Varus.*] This is supposed to be the Publius Quintilius who was one of the assessors of Aquilius, the arbiter (*iudex*) before whom the cause of Quintius was heard. Pro Quint. XVIII. § 56.

XIX. § 54. ..... *tota accusatione.*] So A. B. All other MSS. *et tota accusatione*, and so all edd. before Classen, who remarks—Verba *tota accusatione* cum utroque membro *re vera* et *periculo* coniungenda sunt. However, *et tota accusatione* gives a good sense.

XIX. § 54. ..... *aderat frequens.*] i. e. he was constantly in court. So Pro Rosc. Amer. VI. § 16.

Erat ille Romae frequens atque in foro et in ore omnium quotidie versabatur.

XIX. § 54. ..... *advocabat.*] Here and elsewhere *advocare* signifies to call in the aid of a friend, not, as some scholars have rendered the word in this passage, to act as an assistant. Observe, however, the peculiar technical meaning of *advocatio*, which signifies not only the act of calling upon friends for assistance in judicial matters, but also the time allowed to a defendant for calling together his friends to support him, and

generally, the time allowed to a defendant to prepare for his trial. Hence *advocationes postulare* (Epp. ad Famm. VII. 11.) is to demand postponements.

XIX. § 54. ..... *hoc ipso in loco.*] i. e. the part of the court appropriated to the accused, their counsel and supporters, the *Subsellia reorum.* See below, note on XXIV. § 65.

XX. § 55. *Quum in consilium iri oporteret.*] This is a technical phrase. When the jury on a criminal trial, after hearing the pleaders and witnesses, proceeded to deliberate before giving their votes, they were said *Ire in consilium*, and the contending parties, when they had severally brought their proceedings to a close and had nothing further to urge were said, with reference to the jury, *Mittere in consilium.* So a few lines lower down—*Itum est in consilium:* and in XXVII. § 74—*In consilium erant ituri iudices* XXXII; ..... *ut ne sine Staieno in consilium iretur ... Consurgitur in consilium;* and in XXX. § 83—*Quum in consilium iretur ... Quum in consilium mittebant ... Ne in consilium iretur.* Whether the jury actually retired from the public court for the purpose of considering their verdict, does not appear clearly from these passages, although we may perhaps draw this inference from the clause quoted above—*Consurgitur in consilium.*

XX. § 55. ..... *ex lege illa Cornelia, quae tum erat.*] Compare this with what is said XXVII. § 75—*Consurgitur in consilium, quum sententias Oppianicus, quae tum erat potestas, palam ferri velle dixisset.*

Voting by ballot in criminal trials was introduced by the *Lex Cassia* in B. C. 137, but it is evident from the above passages, that a *Lex Cornelia*, passed we must suppose by Sulla, gave the accused person the option whether the jury should vote secretly or openly. It is also clear that the law in question had been repealed before the impeachment of Cluentius, but it is not, as far as I know, mentioned elsewhere.

XX. § 55. ..... *prima actione condemnatus est.*] i. e. on the first hearing of the cause. In cases of doubt and difficulty, when a majority of the jurors gave a verdict of *Non liquet*, then the presiding judge said *Amplius*, and fixed a day for a second hearing (*secunda actio*). In the present case the whole jury, with one exception, pronounced Scamander guilty on the first hearing (*prima actione*), proving that they felt no hesitation—that his guilt was clear. It must be borne in mind, that in trials *De Repetundis*, after the passing of the Lex Servilia (B. C. 104), a second hearing (*secunda actio*) formed an essential part of the proceedings, unless the *reus*, as in the case of Verres, gave up his cause in despair at the end of the *Prima Actio.* See again XXXVII. § 103.

XX. § 55. ..... *sua sponte.*] i. e. not instigated by others.

XX. § 56. ..... *pronuntiatione.*] The *Pronuntiatio* was the formal announcement by the presiding judge of the Verdict.

XX. § 56. ..... *utique ei locus primus constitueretur, ... impetravit.*] i. e. and obtained permission that his cause should be placed first on the list of those enrolled for trial. See the same phrase again, XXII. § 59—*ab iisdem iudicibus ... locus ei primus est constitutus*, and in XXXIV. § 94—*locus ab iudicibus*

Fausto Sullae ... non est constitutus—i. e. they refused to put his name on the roll—and note on the last mentioned passage.

XX. § 56. ..... *laudatoribus.*] *Laudatores* are witnesses to character.

XX. § 57. *Rem enim integram.*] i. e. a cause which had never been judicially investigated.

XX. § 57. ..... *Cepasios fratres.*] These brothers are noticed in the Brutus (LXIX. § 242).

Eodem tempore (Cicero in speaking of persons who were seniors to him by a year or two), C. et L. Cepasii fratres fuerant, qui multa opera, ignoti homines et repentini, Quaestores celeriter facti sunt: oppidano quodam et incondito genere dicendi.

XXI. § 57. *Iam hoc quoque.*] All the best MSS. omit *quoque*, which is quite out of place here. Nothing had been previously mentioned in which the arrangements of Nature could be arraigned as unfair.

XXI. § 57. ..... *patronus adhibetur.*] After these words, the following sentence is found in A. B., but is omitted in all other MSS. It is rejected by Orelli, but has been adopted by Classen and Baiter.

Nisi forte hoc causae est, quod medici nihil praeter artificium, oratores etiam auctoritatem praestare debent.

This appears to me to have completely the character of a marginal note, which was inserted in the text by some copyist. Nothing can be more frigid, and I have no hesitation in throwing it out.

If it is worth while to explain the words, *auctoritatem* must signify weight of character. No pleader at Rome of high standing would undertake the defence of one who was clearly guilty of an infamous crime. See below, XXXIX. § 109—*proinde quasi*, &c.

XXI. § 58. ..... *agitur causa.*] The words are omitted in A., and placed after *verbis* in B., Baiter brackets them.

XXI. § 58. ..... *addebat ... vulnera.*] Here the cause of Fabricius is tacitly compared to a wounded man; Cepasius, to an unskilful surgeon, who, in operating for the relief of one wound, inflicts new ones.

XXI. § 58. ..... *ut, quamquam sedulo faciebat, ... videretur.*] So A. B., Classen and Baiter, all other MSS. and edd. have

Hoc quamquam sedulo faciebat, tamen interdum non defendere, sed praevaricari accusationi videbatur—a reading which is highly objectionable, for *hoc* could not, without violence, refer to anything except *addebat nova vulnera*, and the words would thus imply that Cepasius, designedly and to the best of his ability, was inflicting new wounds upon the cause of Fabricius.

It is to be observed that *accusationi* is found in all the best MSS., but in no other passage does Cicero use a dative after *praevaricari.* Hence Orelli and Baiter are fully justified in placing *accusationi* within brackets.

For examples of the phrase *facere sedulo*, meaning to exert oneself, to do one's best, see Terent. Eun. II. iii. 71. Adelph. III. iii. 39. Cic. de Finn. III. iv. § 16.

Praevaricari is here employed with reference to a pleader who betrays the cause he had undertaken to defend. See note on XXXVI. § 87, with regard to the proper meaning of the word.

XXI. § 59. ..... *de illo loco.*] i. e. in connection with that stale and hackneyed appeal, *Respicite iudices.* Here *Locus* means *a commonplace.*

XXII. § 59. ..... *de Oppianici causa.*] So nearly all MSS. and edd. except A. B., the Cod. S. Vict., Class. and Baiter, who have *de Oppianici persona causaque.* Classen remarks—*Causa* spectat tentatum ab Oppianico in Cluentium veneficium; *persona* ea omnia complectitur quae de vita Oppianici anteacta praemissa erant—which is quite true if we assume that *persona* really belongs to the text. But it is obvious that such a word was much more likely to have been interpolated than to have dropped out, and since it is omitted in a great majority of MSS. it must be regarded with suspicion. With regard to the phrase *Oppianici persona,* see what is said below in the note XXIX. § 78, on the words *Huius Staieni persona.*

XXII. § 59. ..... *his duobus praeiudiciis.*] Here *praeiudicium* is employed in its strict etymological signification, and means a previous decision—so again a few lines lower down—*nullo praeiudicio facto,* and § 62—*duo praeiudicia,* and XXV. § 68—*duobus iugulatum praeiudiciis.*

XXII. § 59. ..... *Fabriciorum.*] Cicero habitually speaks of the *Fabricii,* although one only, C. Fabricius had been concerned in the proceedings with regard to Habitus (nam L. erat mortuus—XVI), and by using the plural probably intends to include Scamander.

XXII. § 59. ..... *locus ei primus,* &c.] See note on XX. § 56.

XXII. § 59. ..... *nunc omitto.*] The word *nunc* is omitted in B. and placed before *ego omnia* in A. Baiter brackets it.

XXII. § 60. ..... *illi sua per se ipsi iudicia rescinderent.*] It will be remarked that Cicero designedly chooses to take it for granted that the connection of Oppianicus with Scamander was an undoubted and established fact. Baiter brackets the words *per se,* but they seem to be found in all MSS.

XXII. § 60. ..... *quia conscius.*] A. B. have *conscius esset* and so Class. The word had much better be left out.

XXII. § 61. ..... *illa iudicia senatoria.*] i. e. those trials when the juries were composed of senators exclusively.

XXII. § 61. ..... *vera atque insigni turpitudine,* &c.] See especially—In Verr. Act. I. 13.

XXIII. § 62. ..... *T. Atti.*] We find here and elsewhere (XXXI. § 84. LVII. § 120) the MSS. vary between the forms *Accius* and *Attius,* and the same confusion takes place with regard to the Tragic poet.

Cicero in the Brutus (LXXVIII. § 271) thus expresses his opinion of this speaker.

Itaque ne hos quidem equites Romanos amicos nostros, qui nuper mortui sunt, P. Cominium Spoletinum, quo accusante defendi C. Cornelium, in quo et compositum dicendi genus et acre et expeditum fuit: T. Attium Pisaurensem, cuius accusationi respondi pro A. Cluentio, qui et accurate

dicebat et satis copiose, eratque praeterea doctus Hermagorae praeceptis, quibus etsi ornamenta non satis opima dicendi, tamen, ut hastae velitibus amentatae, sic apta quaedam et parata singulis causarum generibus argumenta traduntur, &c.

No fragment of his orations has been anywhere preserved.

XXIII. § 62. ..... *per Fabricios.*] So all MSS. except A. B., which have *Fabricium* and so Class. But see XXII. § 59, and a few lines, only, above we have *Fabricios.*

XXIII. § 62. *Exstat memoria.*] i. e. the recollection of individuals as distinguished from *tabulae publicae* in the next clause. In a great number of MSS. we find *extant memoriae,* but Classen has pointed out that the use of the word *memoriae* in the sense of *commentarii* or memoirs belongs to a later age. It seems to be first employed in this sense in Aulus Gellius—e. g. N. A. IV. 6. *In veteribus memoriis scriptum est*—X. 12. *Phavorinus philosophus memoriarum veterum exequentissimus.* We find *vitae memoriam* a memoir of the life in Suet. Claud. I.

XXIII. § 62. ..... *sunt tabulae publicae.*] It is evident from this passage and from XXXVI. § 99, that a record of the whole proceedings in criminal trials was carefully preserved, for we find Cicero appealing to the depositions of witnesses taken several years before as documents readily accessible.

XXIII. § 62. ..... *in maledicti loco.*] A. B. have *locum,* but Classen rightly retains the common reading and has collected examples of this use of *loco.*

XXIII. § 63. ..... *alia ratione.*] So A. B., D. and all MSS. with very few exceptions, but the great majority of edd. have, perversely enough, adopted *aliqua ratione.* Cicero certainly did not mean to say that Oppianicus was in some respects doubtful as to the issue of the trial, a feeling which might have been entertained by one absolutely innocent, but that he felt no confidence of escape by any other course (*alia ratione*) except bribery.

XXIII. § 64. ..... *iniquus Cluentio.*] A. B. and several MSS. have *inimicus* and so Class. and Baiter. But there is no question here of personal hostility towards Cluentius, Cicero wishes to rest his argument on the broad basis of justice and fairness.

XXIII. § 64. *Si doceo, non ab Habito,* &c.] See Prolegg. § 11.

XXIII. § 64. ..... *corrumpendi iudicii.*] So A. B., Class. and Bait. All other MSS. and edd. omit *iudicii,* which is not absolutely necessary, and may be a gloss.

XXIV. § 65. ..... *negate, negate, inquam.*] So all MSS. and edd. except A. B., Class. and Baiter, who omit one *negate.* Classen has, however, collected several apposite examples of the repetition of an imperative before *inquam,* and the loss of the repeated word is very likely to have occurred in transcription.

XXIV. § 65. ..... *in eo loco.*] i. e. where you sit. A. B., D. and several other MSS. have *meo loco,* and so Baiter. Classen retains the

vulgate and rightly, for Manutius has correctly interpreted *in eo loco* to signify the *subsellia accusatorum*. The impeachers, it would appear, were prohibited from addressing or interrupting the counsel for the defendant unless upon his invitation. We have an excellent illustration in the speech Pro Rosc. Amer. XXVII. § 73.

Ita quaero abs te, C. Eruci, quomodo? et sic tecum agam, ut in eo loco[1] vel respondendi, vel interpellandi tibi potestatem faciam, vel etiam, si quid voles, interrogandi.

Below, LX. § 168, *ex illo loco* bears the same meaning; above, XIX. § 54, *hoc ipso in loco* denotes the *subsellia reorum*. See note.

XXIV. § 65. ..... *quod repetistis, ... quod abstulistis.*] This refers to the recovery of the money from Staienus—a transaction described at the end of Chapter XXVIII. Some of the earlier commentators have entirely mistaken the meaning of this passage.

XXIV. § 66. ..... *tantum datis muneribus perfecerat.*] So A. B., Class. and Baiter. All other MSS. and edd. have *donis datis muneribusque*. It may be difficult to establish any clear distinction between *dona* and *munera*, but we find the two words combined at the end of Chapter LXVI.—*donis, muneribus ... obstrinxit*, where Classen has retained *muneribus*, although there is MS. authority for a good various reading, *muliebribus*, and himself remarks that these two words are frequently joined. In the passage before us edd. in general have not been offended by the tautology, for, from Graevius to Orelli inclusive, they punctuate the clause thus, *donis, datis, muneribusque*.

XXIV. § 66. ..... *eo fautore.*] So A. B. and a few other MSS. and so Class. and Baiter. The great number of MSS. and edd. have *auctore*, which commentators explain by *defensore*, but Classen seems to be right when he asserts that no example can be quoted from any good author in which a juror disposed to favour an accused person is termed the *auctor* of that person.

XXIV. § 67. ..... *ne sua quidem.*] Because he slunk out of court without awaiting the issue of the trial.

XXV. § 68. ..... *causam bonorum Safinii Atellae.*] With the exception of the information afforded by this passage and a cursory allusion below (XXXVI. § 99) to the *iudicium Safinianum*, we know nothing of the cause here alluded to. As far as we can gather, we should conclude that the father of Safinius Atella died while his son was a minor; that the guardians of the latter fraudulently disposed of the property entrusted to them; that the young man impeached his guardians, and, at the same time, to insure their conviction, placed a large sum in the hands of Staienus for the purpose of corrupting the jury; that a verdict was given in favour of the prosecutor, but that it was subsequently discovered that Staienus had not distributed the money among the jurors, but had applied it to his own purposes; and that, when detected, he had refused either to refund it to Atella or to make it over to those who had purchased the property from the guardians, and who, being now obliged to restore it, were likely to suffer loss.

[1] All MSS. have here *in eo loco*, and all edd except Baiter who has introduced *meo loco* in deference to Madvig. Opusc. I. p. 122.

XXV. § 68. ..... *saluti desperare vetuit.*] In the best writers the verb *desperare* is construed with the dative of the thing despaired of, or with the accusative, or with the ablative and the preposition *de*. We may with equal propriety say *desperare saluti*, or, *desperare salutem*, or, *desperare de salute*. The word is also used frequently, absolutely, without a case, in the sense *I am without hope*.—In the phrase *a Senatu desperare* (In Pison. VI.) the meaning is to have no hope of obtaining from the Senate.

XXV. § 69. ..... *negavit, quemquam esse ... qui id efficere possit.*] So all the MSS. with one exception and so the earlier edd.—Ernesti, Orelli and Baiter have admitted *posset*, which is more in accordance with the regular grammatical connexion of the tenses. But *possit* imparts a certain vivacity to the narrative since it presents Staienus speaking, as it were, before us.

XXV. § 69. ..... *invidiam atque offensionem.*] *Invidia* here denotes the ill-will of which a person is the object—*offensio* some act calculated to produce ill-will or enmity.

XXV. § 69. ..... *mente et cogitatione.*] *Mens* here denotes a thought arising in the mind—*Cogitatio* the active examination of that thought,—the comparison of it with other thoughts and schemes.

XXVI. § 70. ..... *miserrimis in locis et inanissimis.*] So A. and a great number of the best MSS. and edd. B. and a few others have *miserrimus in locis et inanissimis;* four have *miserrimus et inanissimus*, omitting *in locis*. The reading in the text although objected to by Class. is quite satisfactory. *Miserrimis* was accidentally changed into *miserrimus*, then *inanissimis* was altered to agree with it, and finally *in locis* left out to make sense of the corrupted words.—Classen has adopted *miserrimus in locis* [*et*] *inanissimis*, Baiter retains the vulgate.

XXVI. § 70. ..... *quid tandem?—nihil enim est ...*] So A. B. and several other MSS. and so Class. and Bait. A majority of MSS. and all edd. before Classen have *qui tandem?* In either case, there is an Aposiopesis—if we adopt *quid* the meaning is, Why need I doubt being able to devise some plan, FOR, (*enim*) &c., if we adopt *qui*, How can I devise a plan that will answer my purpose, but, after all, I need feel no anxiety, FOR, &c. See another example, XXXIII. § 89.

XXVI. § 70. *Praecipitantem igitur impellamus.*] *Praecipito* here denotes to totter on the verge of a precipice,—to be in the act of falling headlong, but is frequently used transitively in the sense of *to throw headlong*, as in Ovid. Fast. V. 633—

Pars putat ut ferrent iuvenes suffragia soli
Pontibus infirmos praecipitasse senes.

Grammarians, in order to explain this double use of the verb, say that when it is used intransitively we must supply *se*—but we could scarcely resort to this device in the present case.

XXVI. § 71. *Capit hoc consilium.*] So all MSS. and edd. except A. B. Class. and Baiter, which have *consilii*. It is obviously a matter of

indifference which reading we select, and therefore we give the preference to that supported by the greatest number of witnesses. So in like manner, a few lines lower down, nearly all the MSS. have *eos qui* and therefore we adopt this in preference to *hos qui* which is found in most edd. Hundreds of similar variations occur in the text of every ancient writer, and in most cases it is a mere waste of time to dwell upon them.

XXVI. § 71. ..... *praeposterus atque perversus.*] Although it may be difficult to distinguish between these two words when applied figuratively to the dislocation of the moral faculties, the ideas implied by them in their literal acceptation are quite distinct. *Praeposterus* is applied to an object when the natural succession of its parts is reversed, when these parts which ought to come first come last—*Perversus* to an object when placed athwart or at right angles to its natural position. Thus if a dog were to walk into a room tail foremost, this would be described by the epithet *praeposterus*, if he were to come in side-ways, by *perversus*. The reason why Cicero calls Staienus *praeposterus atque perversus*, in the present instance, will be explained below.

XXVI. § 71. NE GRATIS.] The meaning is clear. Bulbus, as soon as he heard the welcome words, NOT FOR NOTHING, exclaims "I will follow you whithersoever you please." Orelli and many other edd. make nonsense of the passage by placing *Ne Gratis* within inverted commas, and including it in the Speech of Bulbus.

XXVI. § 71. ..... *Guttam adspergit huic Bulbo*, &c.] This is one of these complicated puns upon proper names in which Cicero so much delights. *Gutta* signifies a vessel with a long narrow neck which allowed the fluid contained in it to escape drop by drop only (*guttatim*), and hence the word is used to denote a cruet for oil, vinegar or sauce of any kind—*Bulbus* signifies an onion or any root of a similar form—*Conditor*, according to the quantity, which might be slurred in the pronunciation, will be a derivative of *Condere*, or of *Condire* to season. Hence the meaning of the passage will be—and he himself, also, who had cooked up the whole plot, sprinkles a little sauce over this onion, (conjoins Gutta with Bulbus)—therefore the onion (i. e. Bulbus) having been thus seasoned appeared by no means harsh (repulsive) in flavour to those who had tasted and swallowed a little bit of hope from his discourse—i. e. to those other jurors to whom he had communicated the plans and promises of Staienus. The reading of this passage as given by Orelli and most edd. is quite unintelligible—*Itaque minime amarus is visus est qui aliquid ex eius sermone speculae degustarat*—A. B. have *degustarant*, and although all other MSS. are said to have *degustarat*, every one knows that this is the most common of corruptions, the letters *m* and *n* in MSS. and also in early printed books being frequently represented by a small line placed above the vowel, and this line was very frequently omitted in transcription. Moreover, the word *is* in MSS. is commonly written as a contraction of *iis* and *eis* and hence the confusion in this case.

Observe also that vegetable Bulbi were not introduced at the beginning of a repast, and therefore Cicero, in the previous sentence, calls Staienus *praeposterus atque perversus*, because he began his mess with a Bulbus (*initium facit a Bulbo*), thus placing that first which should not have been first.

XXVI. § 72. ..... *sequester et confirmator.*] With regard to *Sequester*, see above, VIII. § 28 and note: and again, XXXII. § 87. The *Confirmator* in a bribery transaction was one who became security for the payment of the money promised.

XXVI. § 72. ..... *ut blandissime potest.*] A. B. have *placidissime* and so Class. and Baiter. Classen remarks—Sic rectius scribitur: nam revera iratus placidum vultum simulabat Bulbus.—But the common reading is better, for the expression of countenance assumed by Bulbus is indicated by *hilari vultu*, while *blandissime* represents his soft insinuating *manner* in addressing Staienus.

Instead of *hilari* A. B. have *hilaro*. Both forms are unexceptionable, but the former is the more common, and therefore *hilaro* is more likely to have been changed by a transcriber into *hilari*, than vice versa.

XXVI. § 72. *Quid tu, inquit, Paete?* &c.] This is another complicated joke upon a proper name which cannot be understood without entering into some preliminary details. Cicero in the Brutus, while characterising his own contemporaries, thus speaks of Staienus, (LXVIII. § 241.)

Et C. Staienus, qui se ipse adoptaverat et de Staieno Aelium fecerat, fervido quodam et petulanti et furioso genere dicendi: quod quia multis gratum erat et probabatur, ascendisset ad honores, nisi in facinore manifesto deprehensus poenas legibus et iudicio dedisset.

We learn from this passage, taken in connection with our text, that the original and proper name of this individual was *Staienus*, but that, by some irregular or feigned adoption, he had intruded himself into the *Gens Aelia*, and assumed the designation of *C. Aelius Paetus Staienus*.

The *Gens Aelia* was divided into several *familiae*, of which, in the time of Cicero, the most distinguished were those which bore, respectively, the *cognomina* of *Lamia*—*Ligur*—and *Paetus*.

These things being premised, Cicero here declares that when Staienus adopted himself into the *Gens Aelia* he had selected (*delegerat*) the cognomen of *Paetus* in preference to that of *Ligur* (having just as little right to the one as to the other), because if he had called himself *Ligur*, he was conscious that he was such a brute that people would never have supposed that this appellation had any relation to the noble race of the *Aelii*, but would have regarded it as a mere epithet denoting his barbarian origin, and his descent from some wild horde of Ligurians.

In the above sentence all MSS. and edd., except A. B., Class. and Baiter, have *nationis magis suae quam generis*. Classen omits *suae*, arguing that Staienus was certainly not a Ligurian. I feel satisfied that *suae* is not an interpolation and should resume its place in the text. Staienus was not a Ligurian, but Cicero introduces *suae* as a stroke of humour feigning, as it were, that he believed him to be, or at all events had forgotten that he was not really a barbarian.

XXVI. § 72. *Hic ille planus.*] This word *planus* is the Greek πλάνος and signifies a strolling vagabond, a cheat, an impostor. So Hor. Epp. I. xvii.—

> Nec semel irrisus triviis attollere curat
> Fracto crure planum ...

And Aulus Gellius (XVI. 7), when enumerating a series of strange words introduced by Laberius into his Mimes, mentions this among others—et *planum* pro *sycophanta* dicit: quamquam *planum* pro *sycophanta* M. quoque Cicero in oratione scriptum reliquit quam *Pro Cluentio* dixit.—The word occurs in Petronius also (Satyr. 82).

XXVI. § 72. ..... *quum palam.*] So a great majority of MSS. Most edd. however, before Classen, adopt *quam*, which is scarcely admissible here.

XXVII. § 73. ..... *placuit repente pronuntiari*, DIXERUNT.] A note of the Pseudo-Asconius on the concluding sentence of the first action against Verres, will serve as a commentary on these words.

Moris veterum fuit, cum satis visum esset fluxisse verborum, hanc sibi necessitaten finiendae orationis imponere, ut dicerent ad ultimum, DIXI; quod etiam, ab utraque parte oratione consumta, ut in consilium dimitterentur, Praeco[1] soleret *pronuntiare* DIXERUNT.

From this we learn that each speaker, as he concluded his oration, ended with the word DIXI, and that when both parties had finished their pleadings, the crier of the court proclaimed aloud (PRONUNTIARE *solebat*) DIXERUNT, in order that the jury might now proceed to consider their verdict (*ut in consilium dimitterentur*. See above, XX. § 55).

Canutius believing that bribery was going on, but that the terms had not yet been fully arranged, endeavoured to frustrate the scheme by waiving his right of reply, and thus bringing the proceedings abruptly to a close.

Most edd. of Cicero have *placuit repente pronuntiari. Iudices dixerunt se id velle.* But the words *iudices* and *se id velle* are wanting in all the best MSS., and have evidently been added by some transcriber who did not understand the technical force of DIXERUNT. A. B. and several MSS. have *pronuntiare*, but some others of good note have *pronuntiari*. Classen first restored the text, although Garatoni had previously approached very near to the truth.

XXVII. § 74. ..... *Staienus ipse non aderat.*] Observe the loose practice of the Roman Courts, which permitted a juror to be absent while the cause on which he sat was actually in progress.

XXVII. § 74. ..... *apud iudicem defendebat.*] i. e. he was pleading in a civil suit before an umpire.

XXVII. § 74. ..... *ut ne sine Aelio.*] i. e. Staieno. One MS. only, viz. B., has *Aelio*, all the rest have *Staieno*, except C., which has *illo*, and this, which has been adopted by Baiter, is probably the true reading. The course of corruption would be as follows—the word to which *illo* refers being remote, some one to prevent ambiguity wrote *Staieno* in the margin, then *Staieno* was substituted for *illo* in the text by subsequent transcribers, until some one more careful than his predecessors, being startled by the difference between *illo* in the oldest and *Staieno* in the more recent copies, introduced *Aelio* as approaching more nearly to the former. Cicero, after what he said above (XXVI. § 72), was little likely to have employed the appellation *Aelius* to designate this personage.

XXVIII. § 75. *Ecce tibi.*] i. e. Lo and behold.

XXVIII. § 76. ..... *ex vetere illa disciplina iudiciorum.*] i. e. who had been trained in the good old school of courts where such corrupt practices were unknown. The same phrase nearly, is repeated in XXXVIII. § 107—*ex vetere illa iudicum disciplina.*

[1] *Praeco* is an emendation of Orelli for *Praetor*.

XXVIII. § 76. ..... *statuerunt, quo quisque animo*, &c.] These jurors believed that Bulbus and Staienus had been bribed, but at the same time they believed that Oppianicus was really guilty, and therefore, although influenced solely by the love of truth, resolved to give the same verdict as Bulbus and Staienus. They argued that the motives which led different jurors to give the same verdict, ought in each case to be scrutinized—*quo quisque animo quid fecerit spectari opertere.* Bulbus and Staienus had voted right from bad motives, but this was no reason why those who were pure should vote wrong.

XXVIII. § 76. ..... *ambitione.*] i. e. a desire to court popularity. So *ambitiosus*, XXXVIII. § 108.

XXVIII. § 76. ..... *absolverunt.*] So A. B., C. and a majority of the best MSS. Almost all edd. however, before Classen, have *absolverent*, which is scarcely admissible here.

XXVIII. § 77. ..... *qui omnes rumorum et concionum ventos colligere consuesset.*] The language here is almost poetical. Quintius, a man who went all lengths with the democratic party, inasmuch as he had been in the practice of gathering up all the flying reports blown about the public meetings, &c. *Ventus* and *Rumor* are used again in this speech to denote what is implied here, the empty favour of the crowd. Thus XLVII. § 130—*Verum omnes intelligimus, in istis subscriptionibus ventum quendam popularem esse quaesitum*—where *ventus popularis* means the applause of the crowd: and again, in the same chapter, § 131—*Ex ista subscriptione rumorem quendam et plausum populi esse quaesitum.*—The idea pervading these expressions being something devoid of substance and stability.

XXVIII. § 77. ..... *eius ordinis iudicia.*] i. e. The privilege of acting as jurors which belonged to that body.

XXVIII. § 78. ..... *ut res patefacta.*] The detection of Staienus is mentioned in the Topica, XX. § 75—

Multi etiam in res odiosas imprudentes inciderunt, ut Staieno nuper accidit, qui ea locutus est, bonis viris subauscultantibus, pariete interposito, quibus patefactis in iudiciumque prolatis, rei capitalis iure damnatus est.

XXIX. § 78. *Huius Staieni persona.*] An animated discussion, in which many of the most celebrated grammarians of the 15th, 16th, and 17th centuries, Valla, Sanctius, Vossius, Scioppius, Perizonius and others took part, was long maintained upon the question whether the Latin word *Persona* was ever used by the writers of the golden age to denote an individual man, in the same sense as *person* is used in English and *Persohn* in German. Milton, in the preface to his *Defensio pro Populo Anglicano*, vehemently assails Salmasius for having, in his *Defensio Regia*, characterised the execution of Charles the First as *parricidium* IN PERSONA REGIS *admissum*, an expression which he denounces as a *multiplex barbarismus*, and declares that Salmasius deserved to be hooted and flogged for his bad Latinity.

The expression at the beginning of this chapter has been appealed to as a proof that the phrase is unexceptionable, but it must be observed that we are by no means called upon to translate *Staieni persona* by the

person of Staienus, but rather the character of Staienus—the part which he had played on the stage of public life—a meaning of *persona* which is beyond controversy, and the same explanation may be given of all the other passages in Cicero which have been referred to in the dispute. On the whole, Milton seems to be right in so far as the purest writers of Latinity are concerned, but the rule does not apply to the period of the decline. The whole question is fully treated in Guntherus, *Latinitas Restituta*, p. 405. Iena. 1717.

XXIX. § 79. ..... *summa potestate praeditus.*] This is no exaggeration. The civil power of a Tribunus Plebis was in reality superior to that of any other magistrate. Again in XXXIV. § 94, he terms the power of a Tribune—*summa vis potestatis.*

A. B. omit *praeditus.* It is retained by Classen and bracketed by Baiter.

XXIX. § 79. ..... *accommodatus.*] See XIII. § 36.

XXIX. § 79. ..... *hominem aedilicium, iam praetorem,* &c.] i. e. a person who had held the office of Aedile, and whom men were already regarding as a Praetor—i. e. regarded as certain of obtaining that office.

XXIX. § 79. ..... *clamore, de foro.*] So A. B., Class. and Baiter. All other MSS. and edd. have *clamore hominum.* The word *hominum* is, however, clearly unnecessary, and since it occurs in the preceding clause —*opinionibus hominum*—the repetition would have an unpleasing effect.

XXIX. § 79. ..... *de foro atque adeo de civitate.*] i. e. Junius was compelled by the popular outcry to retire from public life. The words cannot mean, as some commentators assert, that he was actually deprived of the *Civitas*, for this penalty could not have been inflicted unless he had been regularly impeached and condemned of a *crimen capitale.*

XXIX. § 80. ..... *quorum iudicium atque potestas est.*] Strictly speaking, *iudicium* will apply to the jury, *potestas* to the judge.

XXIX. § 80. *At tum si dicerem, non audirer.*] In this and similar cases, grammarians generally say that the imperfect tense is used instead of the pluperfect. It is quite true that the pluperfect might be employed here with perfect propriety, but the imperfect communicates great liveliness, and ought to be rendered closely—If I were speaking at the period to which I refer, as I am now speaking, instead of having a most eagerly attentive audience, as I now have, nobody would be listening to me.

XXX. § 82. .....*profectio ipsius pecuniae.*] i. e. the starting of the money upon its journey of bribery. *Profectio* properly signifies the act of setting out upon a journey, and is used precisely in this sense by Cicero, Philipp. I. i. § 1—

Exponam vobis breviter consilium et profectionis et reversionis meae.

XXX. § 82. ..... *quae ad eam rem.*] So A. B., Class. and Baiter. All other MSS. and edd. have *quae nunc ad eam rem*, but *nunc* seems quite out of place here.

XXX. § 82. ..... *vestigiis ... odoranda est ... cubile.*] The same metaphor is followed out in greater detail in the speech In Pison. XXXIV. § 83—

An vero tu parum putas investigatas esse a nobis labes imperii tui, stragesque provinciae? quas quidem nos non vestigiis odorantes ingressus tuos, sed totis volutationibus corporis et cubilibus persecuti sumus.

XXX. § 82. ..... *vobis iudicibus.*] So A. B. and Class., all other MSS. and edd., including Baiter, have *vobis ducibus*, a reading which, at first sight, appears appropriate since it keeps up the metaphor. But, upon reflection, it will be seen that Classen is right, for in no way could the jurors be said to be leaders or guides in an investigation, the mysteries of which were to be disclosed to them by the orator himself, who exults that times were now changed, and that he would be able, before a distinguished jury (*vobis iudicibus*), to bring forward conclusive evidence which, at a former period, would not have been listened to. Compare XXXIII. § 88—*ut hodierno die primum ... veritas vocem ... his iudicibus freta miserit.*

XXX. § 83. *At enim Staienus.*] Here and in a multitude of other passages *at enim* is employed to introduce an objection which is anticipated and refuted. So at the commencement of the next chapter *At enim pecuniam,* &c. The simple *at* is frequently employed in the same manner, as, a few lines lower down, *At condemnavit*—every speech of Cicero will afford numerous examples.

XXX. § 83. ..... *quum in consilium iretur, ... quum in consilium mittebant.*] See note on XX. § 55, and compare XXVII. § 74.—See also below—*sine Staieno ne in consilium iretur.*

XXX. § 83. ..... *cui pecuniam dederant.*] So the great majority of MSS. without any variation. A. has *cui quod*, B. simply *quod*, Classen, without any authority or necessity, has introduced into his text *qui pecuniam dederant*, and is followed by Baiter.

XXX. § 83. ..... *Oppianicus quaerebat.*] The MSS. are divided between *quaerebat* and *querebatur.* Most edd. have adopted the former: A. B. E., Class. and Bait. have the latter. *Quaerebat* seems to accord better with *flagitabat.* Oppianicus was seeking Staienus, Quintius was clamouring for him.

XXX. § 83. ..... *istinc...istinc,* &c.] i. e. from that side—*ab Oppianico.*

XXX. § 83. ..... *nulla suspicio.*] So A. B., Class. and Bait. All other MSS. and edd. have *et nulla*, but the omission of the conjunction gives additional force.

XXXI. § 84. ..... *ad conciliationem gratiae.*] i. e. for the purpose of bringing about a good understanding between Oppianicus and Cluentius.

XXXI. § 84. *Tene hoc, Atti, dicere,* &c.] Is it possible that you should say this! Here *tene* expresses indignation mixed with astonishment, as in the exclamation of Juno, Æn. I. 37—

..... Mene incepto desistere victam
Nec posse Italia Teucrorum avertere regna!

and again, I. 97–

> ..... Mene Iliacis occumbere campis
> Non potuisse, tuaque animam hanc effundere dextra!

XXXI. § 84. ..... *usu atque exercitatione.*] *Usus* is that knowledge of, and familiarity with, legal matters which would be acquired by an habitual attendance upon courts, *Exercitatio* is the practical dexterity gained by constantly taking an active part in the proceedings of courts.

XXXI. § 84. *Sapientissimum esse dicunt,* &c.] This sentiment is found in Hesiod, Opp. et Dies. 293—

> Οὗτος μὲν πανάριστος ὅς αὐτῷ πάντα νοήσῃ,
> ἐσθλὸς δ' αὖ κἀκεῖνος ὃς εὖ εἰπόντι πίθηται,
> ὅς δέ κε μήτ' αὐτὸς νοέῃ μήτ' ἄλλου ἀκούων
> ἐν θυμῷ βάλληται, ὁ δ' αὖτ' ἀχρῄϊος ἀνήρ.

Lambinus has collected several passages from Sophocles, Aristotle, Livy, &c., where the same idea is expressed.

XXXI. § 84. ..... [*istam ... fabulam.*] The words placed within a bracket in the text are omitted in A. B. and some other MSS., and are, by many edd. regarded as an interpolation. It may be urged in their defence that the expression in § 86—*illud, quod tum explosum atque eiectum est*—seems to be a continuation of the metaphor implied in *dare fabulam.*

XXXI. § 85. ..... *hunc tum.*] *Tum* which is found in A. B., but is omitted in most MSS., is frequently employed throughout this speech to indicate the time when the trial of Oppianicus took place. See above, XII. § 34.

XXXI. § 85. ..... *extra ordinem.*] i. e. irregularly, without any just or lawful excuse.

XXXI. § 86. ..... *alia causa tum Staieni fuit.*] A. B. omit *fuit,* it is retained by Classen and bracketed by Baiter.

XXXI. § 86. ..... *relinquere accusationem Cluentius.*] A. B. and Class. have *Cluentius poterat,* but *poterat* is quite unnecessary, and looks like an interpolation. Baiter retains the vulgate.

XXXII. § 87. *An ut praevaricaretur,* and above, § 86—*ignominia calumniae.*] Here *praevaricari* is used in the strict technical sense, denoting the conduct of an accuser who, from corrupt motives, is induced to manage his cause in such a manner as to procure the acquittal of the person impeached. In XXI. § 58, *praevaricari* is applied to a pleader who appeared to be betraying the cause he had undertaken to defend, but this is not the proper signification of the word, at least, Ulpian says expressly, (Digest. XLVII. xv. 1)—Is autem PRAEVARICATOR proprie dicitur, qui publico iudicio accusaverit, &c.,—and Marcianus (Digest. XLVIII. xvi. 1) when commenting on the S. C. Turpilianum, passed A. D. 61, briefly enumerates and defines the offences of which public accusers might be guilty, and which were punishable by law.

Accusatorum temeritas tribus modis detegitur, et tribus poenis subiicitur: aut enim CALUMNIANTUR, aut PRAEVARICANTUR, aut TERGIVERSANTUR. 1. CALUMNIARI est falsa crimina intendere:

2. PRAEVARICARI vera crimina abscondere: 3. TERGIVERSARI (in universum) ab accusatione desistere.

XXXII. § 87. ..... *Iam id quoque,* &c.] i. e. Even if we were to admit this to be a true version of the story, your case would be as bad as ever—for to employ money for the purpose of inducing an accuser to compromise his impeachment, is in reality an act of judicial corruption as much as the act of bribing jurors. Baiter has *nam id* upon no satisfactory authority.

XXXII. § 87. ..... *sequestre.*] See Note on VIII. § 25, and compare XXVI. § 72.

XXXII. § 87. ..... *amicum necessariumque communem.*] Properly speaking, *necessarius* seems to denote a person closely and intimately connected with another upon terms of equality, but not by any tie of blood or marriage. Thus, in XXXIV. § 94—*Sulla maximis opibus, cognatis, affinibus, necessariis, clientibus plurimis—necessarii* are distinguished from *cognati, affines,* and *clientes.* The connection subsisting between *necessarii* was called *necessitudo.* See XLII. § 117.

XXXII. § 87. *Sed quid ego ... disputem.*] So all MSS. except A. B., which have *disputo.* Classen argues strongly in favour of the latter, but the matter is scarcely worth discussion, no point of meaning or criticism being involved. *Quid disputo* will signify, Why do I discuss: *Quid disputem,* Why need I discuss.

XXXII. § 87. ..... *ad quam rem fuerit.*] Many MSS. have *ad quam rem data fuerit,* but *data* is omitted in A. B., E. and several others. It would be an unnecessary and disagreeable repitition of *data est* in the line above, and has all the air of an interpolation.

XXXII. § 87. ..... *quadragena millia nummum.*] A. B. omit *nummum* here, retaining the word, however, above in *quadraginta millia nummum.* We may remark again (see above, VII. § 22), that the greatest confusion prevails in MSS. wherever numbers occur, arising in all probability from the circumstance that these in the oldest copies were invariably expressed by symbols and not by words. Mistakes would constantly arise among careless and ignorant transcribers both in copying these and in translating them into words, the difficulty being much increased by the highly elliptical forms of expression commonly employed in computation. Here the insertion or omission of *nummum* (IIS) is a matter of perfect indifference.

XXXII. § 87. ..... *describere.*] There is a sort of pun on the word *describere,* for while it signifies to divide or distribute or mark out for distribution, it is also employed technically to denote the drawing of diagrams by mathematicians; e. g. Liv. XXV. 31—Archimedem, memoriae proditum est ... intentum formis, quas in pulvere descripserat, ab ignaro milite quis esset interfectum.

XXXII. § 88. *At enim iudicia facta,* &c.] Here begins a new division of the speech. *At enim*—it will be urged, says Cicero, that many legal decisions have been pronounced to the effect that Cluentius employed bribery on the trial of Oppianicus. To this I reply—

1. That no *direct* decision has been or could have been pronounced, because the question of the guilt or innocence of Cluentius was never submitted to a court of justice *directly* (suo nomine) until now.

2. Those decisions which, it is pretended, asserted *indirectly* the guilt of Cluentius cannot be regarded as possessing any weight, for some of them were of a violent and tumultuous character, some of them had no proper bearing on the case, some of them actually told in favour of Cluentius, and some were of such a description that they have never, at any time, been either called or considered legal decisions.

He then proceeds to examine these *iudicia* in succession.

1. The condemnation of C. Iunius, the Iudex Quaestionis who presided at the trial of Oppianicus. XXXIII.
2. The condemnation of Bulbus. XXXV. § 97.
3. The condemnation of Popillius and Gutta. XXXVI. § 98.
4. The condemnation of Staienus. XXXVI. § 99.
5. The trial of Fidiculanius Falcula. XXXVII. § 103.
6. The case of Septimius Scaevola. XLI. § 115.
7. The *Subscriptio Censoria* attached to the names of several of the jurors and to that of Cluentius himself. XLII. § 117.
8. The will of Cn. Egnatius disinheriting his son for his conduct as a juror on the trial of Oppianicus. XLVIII. § 135.
9. The resolution of the senate in reference to the corrupt practices resorted to on that trial. XLIX. § 136.
10. The expressions employed by Cicero himself, upon former occasions, with regard to the trial and to those concerned in it. L.

XXXII. § 88. *Ita ... diu iactata ista res est.*] The words *ista res* seem to be found in all MSS., but are bracketed by Baiter at the suggestion of Garatoni. They certainly have all the air of an interpolation, coming, as they do, after *ista ipsa res*, two lines above.

XXXII. § 88. ..... *quae facta postea.*] Arrange the words for translation thus—*quae dicerentur iudicia facta postea de illo iudicio.*

XXXIII. § 89. *At quam quaestionem? Vultus enim*, &c.] Remark the Aposiopesis. But to what kind of trial? *I will tell you:* FOR the expression of your countenances, &c. See a similar example, XXVI. § 70, and note thereon.

XXXIII. § 90. *Putabo fuisse.*] Sc. *iudicium*, i. e. for the sake of argument I shall suppose it to have been a regular trial. There is no variation in the MSS. here, but the construction seems to be somewhat awkward and abrupt. As far as the words are concerned, *fuisse* might belong to *quaestio* or to *disceptatio* as well as to *iudicium*, or to all three collectively.

XXXIII. § 90. ..... *illo populo ... cui tum mos gestus est.*] So all MSS. and edd. except A. B., Class. and Bait., who have *cui tum populo*, but the second *populo* is clearly a gloss, for no additional force or distinctness is given by the immediate repetition of the word.

XXXIII. § 90. ..... *hac lege ... qua accusatur Habitus.*] That is, the *Lex Cornelia de Sicariis*, which contained a chapter on the crime of corruptly procuring the condemnation of one innocent. (See Prolegg. § 7. § 8.) But it was impossible, says Cicero, that Junius could have been impeached under that law, for that was the very law which he himself was administering at the time, in the capacity of assistant judge.

XXXIII. § 90. *Paucos dies exspectasset Quintius.*] It is very true, continues Cicero, that Quintius might, if he had pleased, have waited for a few days, and brought Junius to trial in a regular manner for the offence with which he charged him. But it did not suit his purpose to wait, for if he had delayed until Junius was out of office, he would have been out of office himself, and the popular excitement would have been allayed.

XXXIII. § 90. ..... *sedata iam invidia.*] So all MSS. and edd. except A. B. and Class., who omit *iam*. Bait. brackets it. But see note on XXVI. § 71.

XXXIII. § 90. ..... *in tempore.*] i. e. the excitement of the moment.

XXXIII. § 91. *Quod in legem non iurasset.*] We learn from this passage that a *Iudex Quaestionis* was bound to take an oath that he would faithfully execute the provisions of the law which he was called upon to administer.

XXXIII. § 91. ..... *homo sanctus et diligens.*] We need scarcely point out, even to the young scholar, that these epithets are applied in the most bitter irony.

XXXIII. § 91. ..... *subsortitionem.*] The jury on a criminal trial were appointed by lot, and this process was termed *sortitio:* when a vacancy, from any cause, occured in a *consilium*, the place was filled up by a fresh drawing of lots, and this process was termed *subsortitio.*

XXXIII. § 91. ..... *interlitus.*] i. e. with words written upon erasures. We have *interleverit* below (XLIV. § 125), and in the In Verr. Act. II. ii. 42. § 104—Nihil dicimus: tabulae sunt in medio, quae se corruptas atque interlitas esse clamant.

XXXIV. § 92. ..... *aut si in legem aliquando non iuraverat.*] So all MSS. and edd. except A. B., Class. and Bait., who have *si in aliquam legem aliquando n. i.*, but *aliquam* is entirely out of place here, and would give a false complexion to the sentence. Cicero is here merely repeating the formal phrase which he had used above (XXXIII. § 91)—*quod in legem non iurasset*, and which he again employs in the next Chapter, § 96—*sive quod in legem non iurasset.*

XXXIV. § 92. ..... *quod contra aliam legem commiserat.*] i. e. because he had offended against another law. *Committere*, when followed by *in legem*, or *contra legem*, or by *lege* without a a preposition, signifies absolutely to transgress or to violate a law. So Cicero, Brutus XII. § 47—*quia quasi committeret contra legem quo quis iudicio circumveniretur*, &c. Again, the phrases *Committere multam, Committere poenam*, denote, to commit an offence involving a fine, a penalty, &c. So below, XXXVII. § 103 —*ut illam multam non commiserit*, i. e. although he may not have been guilty of the offence involving that penalty, i. e. of the offence in question.

XXXIV. § 92. *Qui hoc confitentur.*] The meaning seems to be—Can those who admit as a fact the monstrous iniquity that Junius, although impeached of one offence, was in reality condemned on account of another altogether different, maintain that the procedure in question was a regular trial.

XXXIV. § 92. ..... *possunt iidem illud iudicium.*] Observe that *illud iudicium* in this clause, refers to the trial of Junius; *illud iudicium* in the next clause, to the trial of Oppianicus.

XXXIV. § 92. ..... *infestus tum Populus Romanus Iunio fuit.*] So A. B. Several MSS. and almost all edd. before Classen have PRAETOR instead of *Populus Romanus.* C. D. and several MSS. have PR.; a few have TR. PL.—PR., which is the reading of the Turin Palimpsest (C.), is probably that of the oldest MSS. In process of time some transcribers interpreted PR. to be an abbreviation for PRAETOR, as it actually is in some cases. Other transcribers, perceiving that *Praetor* was out of place here, corrected the supposed error by substituting *Tribunus Plebis.*

XXXIV. § 93. ..... *tunc Iunio.*] A. has *cum;* B., followed by Class. and Bait., *tum;* all other MSS. and edd., *tunc.* The difference is of no importance, but it is clear that *tunc* ought to be preferred to *tum,* because it corresponds with the *nunc* of the preceding clause.

XXXIV. § 93. *Gradus illi Aurelii tum novi.*] We hear of a *Tribunal Aurelium* in Pro Sest. XIV. § 34—servorum delectus habebatur pro *Tribunali Aurelio;* and the *Gradus Aurelii* are supposed to have been a flight of steps leading up to the elevated platform of the *Tribunal.* It has been conjectured from the expression *tum novi,* that the whole structure was the work of M. Aurelius Cotta, who was consul with L. Licinius Lucullus in B. C. 74. See a curious passage in which mention is made of the *Gradus Aurelii,* in Pro Flacc. XXVIII. § 66, and compare In Pison. V. § 11.

XXXIV. § 93. ..... *ab reo.*] i. e. on behalf of the accused.

XXXIV. § 94. ..... *apud C. Orchinium.*] Here and in LIII. § 147, as might be expected in the case of an uncommon name, we find a great variety of forms in the MSS. — *Orchinium — Orchivium — Orchium — Archium—Cerinthium,* &c. The Turin Palimpsest, which is most likely to be right, has here CORCHIVM, i. e. *C. Orchium,* and in LIII. § 147, CORCHIVI in the genitive. The person in question was one of the Praetors of the year, and presided in the criminal court for trying causes *De Peculatu.*

XXXIV. § 94. ..... *locus ab iudicibus Fausto Sullae ... non est constitutus.*] i. e. the Judices refused to place the cause upon the roll for trial. We learn from this passage that the Judices attached to a criminal court performed, to a certain extent at least, the functions of an English Grand Jury, and could refuse to entertain a charge. We learn also from the Divinatio in Q. Caecilium, that when more than one accuser came forward to prefer the same charge, the Judices, after hearing parties, selected the individual whom they judged best qualified to conduct the prosecution: and we infer, from two passages in this speech already noticed, that they could arrange the causes set down for trial in what order they pleased (XX. § 56. XXII. § 59).

XXXIV. § 94. ..... *Fausto Sullae de pecuniis residuis.*] L. Cornelius Sulla, son of the Dictator, was named *Faustus,* an epithet intended to correspond with the title *Felix,* bestowed on his father. He is generally spoken of by Cicero and others as *Faustus Sulla,* or simply as *Faustus.* The elder Sulla, during the period of his dominion, had drawn large sums from the state treasury. After his death, when the party opposed to his measures was gradually gaining the ascendancy, and when the Tribunes had recovered (B. C. 70) the powers of which he had stripped them, attempts were made to bring Faustus Sulla to trial, on the charge that a large amount of public money, which had not been applied to the public service, remained in his hands as his father's heir. Such sums were technically termed *Pecuniae Residuae,* and we find several allusions in the Digest. to a *Lex Iulia de Residuis,* a law which included also other kinds of embezzlement. Thus Marcianus (Digest. XIII. xiii. 4, § 3)—

Lege Iulia de Residuis tenetur is apud quem ex locatione, emtione, alimentaria ratione, ex pecunia quam accepit, aliave qua causa, pecunia publica resedit.

An action of this nature had been brought against Faustus, in the year in which this speech was delivered, by one of the Tribunes, but had failed; and we learn from a fragment of the Oration for Cornelius, that Cicero himself had spoken against the measure in a public meeting (*in concione*). See Ascon. in Cornel. p. 72, ed. Orelli. But the matter was by no means forgotten, for we find that the ten commissioners whom it was proposed to appoint by the Agrarian Law of Rullus, were to be armed with powers to recover public money which had not been duly accounted for, and that they expected to obtain a large sum from young Sulla—*maximam pecuniam se a Fausto ablaturos arbitrantur* (De leg. Agr. I. 4, § 12). Whatever may have been the circumstances of Sulla at this period, he is represented by Cicero a few years after (B. C. 49) as insolvent—Quid Faustum, quid Libonem praetermissurum sceleris putas? quorum creditores convenire dicuntur (Epp. ad Att. IX. 11).

Faustus Sulla married the daughter of Pompeius Magnus, and accompanied his father-in-law to the East, where he distinguished himself greatly at the siege and capture of Jerusalem. He followed the fortunes of Pompeius during the great Civil War—was taken prisoner in Africa after the battle of Thapsus (B. C. 46)—and was killed a few days subsequently in a sort of military riot (Auct. Bell. African. 87—95).

XXXIV. § 94. ..... *exlegem.*] Here *exlex* must signify, above the controul of the laws, as it does in Liv. IX. 34. This meaning is slightly modified in the well known Horatian line, A. P. 224—

Spectator functusque sacris et potus et exlex.

XXXIV. § 94. ..... *affinibus, necessariis,* &c.] See note on XXXII. § 87.

XXXIV. § 94. ..... *criminosus.*] Here and elsewhere *criminosus* signifies full of accusations, and hence it is used in a modified sense to mean reproachful or implying reproach, as in Pro Planc. XIX. § 46—*amicitiam nomine inquinas criminoso.*

XXXIV. § 94. *Tempus hoc tranquillum atque pacatum.*] So all MSS. and edd. except A. B. and Classen, who have *placatum,* which seems decidedly inferior to the common reading.

XXXV. § 95. ..... *sapientia et humanitate.*] A. B. omit the words *et humanitate,* which are retained by Classen and bracketed by Baiter.

XXXV. § 95. ..... *iactatione populari.*] Some of the older commentators explain this—*concitatione et veluti tempestate populi;* but the true meaning is, by laying himself out for the applause and favour of the mob. The idea implied by *iacto* and *iactatio* in this and similar passages, is to shew off for the purpose of attracting admiration, and thus the verb is used by Juvenal—

Ipse lacernatae quum se iactaret amicae—

and it is common in Cicero in this sense.

XXXV. § 95. ..... *nec P. Popillius, nec Q. Metellus.*] P. Popillius Laenas was consul B.C. 132, and, in consequence of the harshness which he displayed towards the partizans of Tiberius Gracchus, incurred the hostility of Caius. When the latter attained to power, Popillius, in order to avoid the consequences of this resentment, retired into exile, and Gracchus then persuaded the people to interdict him from fire and water. —Ubi enim tuleras, ut mihi aqua et igni interdiceretur? quod Gracchus de P. Popillio, Saturninus de Metello tulit. (Orat. pro dom. XXXI. § 82, and again, XXXII. § 87.)

He was recalled by a rogation of L. Calpurnius Bestia, Tribune of the Plebs, in B. C. 121, after the death of C. Gracchus (Cic. Brut. XXXIV. § 128).

With regard to Q. Caecilius Metellus Numidicus, see above, note on VIII. § 24.

XXXV. § 96. ..... *illud iudicium.*] i. e. the trial of Iunius.

XXXV. § 96. ..... *subsortitus iudicem non esset.*] All MSS. seem to have the word *iudicem*, but Baiter brackets it in deference to the opinion of Garatoni.

XXXV. § 97. *At enim etiam Bulbus.*] So A. B. Almost all MSS. omit *enim*, which is employed here as explained above, XXX. § 83. It is not essential, but it, in all probability, dropt out in consequence of its resemblance to the word *etiam* which immediately follows.

XXXV. § 97. ..... *hoc iudicium cum illo.*] *Hoc iudicium* is the trial of Bulbus for *Maiestas—illo* (*iudicio*) is the trial of Oppianicus.

XXXV. § 97. *At hoc obfuit ei.*] i. e. this charge, the charge of having been concerned in bribing the jury on the trial of Oppianicus.

XXXVI. § 98. ..... *P. Popillii.*] Observe that this P. Popillius was one of the jurors on the trial of Oppianicus, and quite a different person from the P. Popillius named in the preceding chapter.

XXXVI. § 98. ..... *qui accusati sunt ab iis, qui erant ipsi,* &c.] Cicero here indicates that there was a law or custom that if any one found guilty of *Ambitus* turned informer, and procured the conviction of another person for the same offence, he himself was pardoned (*in integrum restituebatur*). Modestinus in the Digest. (XLVIII. xiv. 2) on the *Lex Iulia de Ambitu* says—Qua lege damnatus si alium convicerit, in integrum restituitur; non tamen pecuniam recipit.

XXXVI. § 98. ..... *probarint, quod.*] A. B. have *probaverint, quum*—and so Classen.

XXXVI. § 98. ..... *alios reprehendissent.*] Here *reprehendere* signifies to detect, impeach and convict.

XXXVI. § 99. ..... *non recito testimonium.*] See note on XXVI. § 62.

XXXVI. § 99. ..... *Mam. Æmilio.*] This is a conjectural emendation of Manutius. All the MSS. have *M. Æmilio.* But *M. Æmilius Lepidus* was consul along with *Q. Lutatius Catulus* B. C. 78, while the person here indicated is in all probability *Mamercus Æmilius Lepidus Livianus*, who was consul with *D. Iunius Brutus* B. C. 77, and being proconsul in Italy, the year following had Staienus for his Quaestor.

After all, however, the emendation of Manutius is not required for the name of *Lepidus Livianus* at full length, as given from the Fasti by Clinton, was *M. Æmilius Mamercus Lepidus Livianus*, so that he as well as the consul of the preceding year would be correctly designated *M. Æmilius.*

XXXVI. § 99. ..... *iudicii Safiniani.*] See above XXV. § 68.

XXXVI. § 99. ..... *reticuit.*] So A. B., Class. and Bait. All other MSS. and edd. have *retinuit*, except one which has *sustinuit.* It is argued that *retinuit* is almost synonimous with *suppressit*, while *reticuit* gives an additional touch to the picture. This is perhaps a little fanciful.

XXXVI. § 100. ..... *P. et L. Cominiis.*] We have above, XXIII. § 62, quoted a passage from the Brutus, in which very favourable mention is made of P. Cominius of Spoletium, who brought an impeachment of *Maiestas* against C. Cornelius, when the latter was defended by Cicero (B. C. 65). According to the account given by Asconius, in his introduction to the speech for Cornelius, the prosecution was conducted by the brothers jointly, the information was lodged by Publius (*detulit nomen*), and his brother was one of the *Subscriptores.* The speech delivered on that occasion by P. Cominius was still extant when Asconius wrote, who says that it was well worth reading, not only as throwing light upon the oration of Cicero, but also on account of its intrinsic merits.[1]

XXXVI. § 100. ..... *quae nunc mihi est.*] So all MSS. and edd. except A. B. and Class., who have *sit*, but the indicative seems absolutely required here.

XXXVI. § 100. ..... *se accepisse dicebat.*] A. B. omit *se* and so Class., but the word does no harm. Bait. conjectures *accepisse se.*

XXXVI. § 101. ..... *ad Iuturnae.*] There was a temple of Juturna in the Campus Martius, built by Q. Lutatius Catulus. See Ovid. Fast. I. 463. Serv. ad Virg. Æn XII. 139.

XXXVI. § 101. ..... *quum idem defenderet.*] Observe that *defendere* here signifies to urge as a plea. So In Verr. Act. II. iii. 37, § 85 —*Sed quid ego ex te quaero quid defensurus sis?* and again, In Verr. Act. II. v. 58, § 151—*Quid enim defendit;* and a few lines above—*Cui si etiam id quod defendit, velim concedere.*

[1] See Ascon. in Cornel. pp. 59—62. The MSS. of Asconius give C. as the praenomen of the second brother.

XXXVI. § 102. *Quamobrem si Staieni damnatione*, &c.] This is a very intricate sentence, and various emendations have been proposed by different editors. Classen, while pointing out the deficiencies of his predecessors, has himself failed to give a full and clear explanation.

The argument, plainly stated, is to this effect—

The opponents of Cluentius maintain that his guilt may be inferred from the condemnation of Staienus.

It is true that Staienus, when impeached for a different offence, was attacked on account of his behaviour at the trial of Oppianicus. But the Cominii, who conducted the impeachment, directly charged him with having received money *from Oppianicus* for the purpose of bribing the jurors. Staienus did not deny that he had received money from Oppianicus, but alleged that it was for the purpose of bringing about a good understanding between Oppianicus and Cluentius—an explanation which was received with derision, and Staienus, after the enormities of his whole career had been exposed, was found guilty.

Wherefore (*quamobrem*), continues Cicero, it being admitted by all parties (*quum ita constitutum sit*) that either Oppianicus or Cluentius was guilty of bribery.

If it was formally decided, in a court of justice, by the conviction of Staienus, that Oppianicus sought to bribe a jury, and had given money to a juror for the purpose of purchasing votes,

And if no trace of money given by Cluentius to a juror can be discovered on the closest scrutiny,

And, finally, if the money of Oppianicus, after the trial was over, was found in the hands of a juror and taken away from that juror, who was Staienus,

If all this is true (and the facts are notorious), who can doubt that the conviction of Staienus, far from telling against Cluentius, affords in reality a strong presumption in his favour?

No doubt there is considerable indistinctness and confusion in words which follow *Quamobrem* to the end of the chapter, and the clause—*quum ita constitutum sit... Oppianicus* must be regarded as parenthetical; but the punctuation of Orelli, who places everything from *quum ita* down to *ablata est* within brackets, renders the whole perfectly unintelligible.

It is far from impossible that this want of distinctness may have been intentional on the part of Cicero, for his argument, when fairly stated, will not bear examination—repeating, as he does, the fallacy that bribery must have been confined to one of the parties. See above, XXIII. § 64, and Prolegg. § 11.

Remark that *ita* does not refer to the preceding clause, but to what follows *uti in illa culpa*. Most MSS. have *reperitur*, which is in itself unexceptionable; but *reperietur*, which we have admitted on the authority of the Turin Palimpsest, is more emphatic, implying that no trace of money so employed by Cluentius ever had been or ever would be found.

XXXVII. § 103. ..... *C. Fidiculanius Falcula.*] See Prolegg. § 10.

XXXVII. § 103 ..... *quod non suae decuriae munere*, &c.] We know that at this period the whole body of the *iudices* was divided into sections called *decuriae*, and it has been conjectured, for we have no certain information upon this point, that the *decuriae* were called upon to serve in turn, or that particular *decuriae* were assigned to particular courts. Falcula was charged with having sat as a juror upon the trial of Oppianicus, although the duty did not devolve upon the *decuria* to which he belonged. Moreover, Falcula was not one of the original members of

the jury, but had been chosen to fill a vacancy by the process called *subsortitio*, and Junius, it was alleged, had not conducted the proceedings according to law. Hence the words *neque ex lege sedisset* in this sentence and the expression employed above, XXXIV. § 92—*si ex lege subsortitus non erat Junius.*

XXXVII. § 103. ..... *prima actione.*] See above, note on XX. § 55.

XXXVII. § 103. *Nihilo minus enim*, &c.] The edd. of Cicero have given up this passage as hopelessly corrupt. Orelli says—

Locus omnino corruptus nec sine melioribus MSS. restituendus. Plura verba excidisse, quibus transitus fieret ad alterum Fidiculanii iudicium opinatus est Weiske. Ut nos mance et corrupte codd. plerique.

Classen, following A. B., reads *capta* instead of *captam*, but adds—Hunc locum, quem nulla ratione expedio, ad optimorum codd. fidem exprimere satius videbatur, quam quidquam incerta tangere coniectura.

I cannot look upon the case as so desperate. That there is some imperfection in the text is almost certain, but a distinct meaning may be elicited from the words even as they stand. I would adopt the following punctuation.

Non numero hanc absolutionem. Nihilo minus enim potest, ut illam multam non commiserit, accepisse tamen ab rem iudicandam captam. Nusquam Staienus eadem lege dixit. Proprium crimen illud quaestionis eius non fuit. Fidiculanius, &c.

Falcula had been brought to trial twice, for different offences. On his first trial he was charged with having obtained admission into the jury, on the trial of Oppianicus, in an irregular and illegal manner, an offence for which the law imposed the penalty of a fine. On his second trial he was charged directly with having received a sum of money from Cluentius, and was impeached under the law *De Repetundis*. Cicero, after having stated that Falcula was acquitted without hesitation upon his first trial, now affects great fairness. *Non numero hanc absolutionem*, I lay no stress on this acquittal—I do not reckon it as a point in my favour, for even although he may not have been guilty of the offence with which he was first charged, and which would have subjected him, if guilty, to a pecuniary fine (*ut illam multam non commiserit*), it is still very possible that he may have received a bribe in his capacity of a juror (*potest accepisse [pecuniam] captam ob rem iudicandam*). The orator having now dismissed the first trial of Falcula, passes on mentally to the second, in which he was actually impeached for money *captam ob rem iudicandam*, and the train of thought seems to be as follows: I am willing to admit that the *first* trial of Falcula had no bearing upon my case, and as to the second, Staienus, upon whose conviction so much stress has been laid, was nowhere impeached under the same law as Falcula [on his second trial] (*nusquam Staienus eadem lege dixit*), for it did not belong to the court which tried Staienus to take cognizance of that particular offence of which Falcula was accused (*Proprium crimen illud eius quaestionis non fuit*)—Staienus having been impeached of *Maiestas*, Falcula *De Repetundis*. Hence, neither on the first trial of Falcula, nor on the trial of Staienus could the question with regard to the corruption of the jury on the trial of Oppianicus be opened up; but on the second trial of Falcula the case was entirely different: here one of the jurors of Oppianicus, who had been singled out as guilty of having received a bribe, was impeached on that specific charge, was honourably acquitted, and his innocence placed beyond a doubt.

There is unquestionably a sudden and harsh transition in passing from *captam* to *nusquam*, but this is not sufficient to justify us in pronouncing the passage wholly unintelligible.

XXXVII. § 103. ..... *ut illam multam non commiserit.*] See above, note on XXXIV. § 92.

XXXVII. § 104. *Accepisse a Cluentio IIS* cccc.] So A. B. The clause is omitted in all other MSS. No faith can be reposed in this number. We have seen above (XXV. § 69, XXVII. § 73, XXXII. § 87) that 40,000 sesterces was the sum which Oppianicus was believed to have promised to each of sixteen jurors, and hence an assertion that Cluentius had given ten times that sum to Falcula would have outraged all probability. See what we have said on this matter in Prolegg. § 11.

XXXVII. § 104. *Adducti iudices sunt.*] So A. B., Class. and Bait. Many MSS. have *abducti*, which seems clearly corrupt. One has *addocti*, which has been adopted by Ernesti and Orelli. The principal objection to *adducti* is the harsh ellipse of *ut iudicarent*, which must be supplied in order to complete the construction. Classen, however, quotes a similar use of the word from Epp. ad Att. XI. 16—*sed ego non adducor quemquam bonum ullam salutem putare mihi tanti fuisse, ut eam peterem ab illo*, &c., and also from De Finn. I. 5, § 14—*Nam illud quidem adduci vix possum, ut ea, quae senserit ille, tibi non vera videantur*—but here the true reading is probably *illuc*. The verb *addoceo*, which must signify, to teach something in addition to what is already known, seems to be found in Horace only, Epp. I. v. 18—

Sollicitis animis onus eximit, addocet artes.

XXXVII. § 104. ..... *qui non perpetuo sedisset.*] i. e. continuously—uninterruptedly from the commencement of the trial.

The logic and the iudicial morality of Cicero in the closing sentence of this chapter are alike false.

XXXVIII. § 105. ..... *rumusculos.*] *Rumusculus*, a diminutive from *rumor*, occurs again, De legg. III. xvi. 35, in connection with the same verb *aucupari*.

XXXVIII. § 105. ..... *condemnasse.*] sc. Fabricium.

XXXVIII. § 106. ..... *respondet.*] All the MSS. have *respondit*.

XXXVIII. § 106. ..... *ii tales viri.*] *Tales viri*, as Classen remarks on I. § 3, is a complimentary expression frequently applied by Cicero to the members of a jury—honourable men.

XXXVIII. § 106. ..... *de statu suo declinarint.*] i. e. swerved from the firm position they had taken up.

XXXVIII. § 106. ..... *sua sponte.*] i. e. of their own unbiassed judgment, uninfluenced by bribery or corruption of any kind.

XXXVIII. § 106. ..... *bis iam antea.*] So all MSS. and edd. except A. B., Class. and Bait., who omit *iam*.

XXXVIII. § 107. ..... *ex hominibus ipsis.*] So all the MSS., but Ernesti and Orelli, following some of the earlier edd., have substituted *nominibus*—a change entirely uncalled for.

XXXVIII. § 107. ..... *quod hi fecerunt.*] So A. B. and a few other MSS. The great majority of MSS. and all edd. before Class. have *fecerint*, which is false Latinity, for the *quod* here refers to one particular definite act on the part of these individuals. Cicero does not mean to say that whatever these individuals had at any time done was right, which would be implied by *fecerint*, but, simply, that his hearers might safely infer from the general character of the men, that their conduct on that particular occasion, the trial of Oppianicus, was wise and upright.

XXXVIII. § 107 ..... *P. Octavio Balbo.*] In the speech against Verres, Act. II. ii. 12, we read of a *L. Octavius Balbus, iudex, homo et iuris et officii peritissimus*—whom we might reasonably suppose to be the same person with the individual here named, but all the MSS. have in this passage *P. Octavio Balbo*.

XXXVIII. § 107. ..... *ex vetere illa iudicum disciplina.*] See above, note on XXVIII. § 76.

XXXVIII. § 107. ..... *ingenio*, &c.] Observe that all the qualities necessary to render a man a perfect juror, are here enumerated—natural ability; legal knowledge; high sense of honour; conviction of the sanctity of an oath; activity and conscientiousness in the discharge of duty.

XXXVIII. § 108. ..... *ambitiosus.*] i. e. a courter of popularity.

XXXIX. § 109. *Quod erat odium?*] This is equivalent to the expression in the following chapter, § 110—*quanto in odio ... fuit; odium* may be used to denote the hatred which we inspire in others, as well as the hatred which we feel towards others. Thus, in Plaut. Asin. II. iv. 60—

Perii hercule! iam hic me abegerit suo odio,

i. e. by his hateful presence, which some of the commentators on the passage erroneously interpret by *sua iracundia*.

XXXIX. § 109. ..... *quanta ignoratio sui?*] The MSS. here and elsewhere hesitate between *ignoratio* and *ignorantia*. Classen, following A. B., adopts the latter, with the remark—Si quod utriusque formae discrimen admittendum sit, haud dubie in eo cernitur, quod *ignoratio* in singulis rebus male intellectis versetur, *ignorantia* insitum animi vitium contineat; quod ipsum nostro loco conspicitur.—But if this doctrine be correct, the introduction of *sui*, which indicates a specific kind of ignorance, demands that we should employ *ignoratio*. For deficiency in a single, although highly important, branch of knowledge, viz. *self-knowledge*, does not necessarily imply a total want of knowledge, or any general incapacity for the acquirement of knowledge.

XXXIX. § 109. ..... *qui illud etiam ipsum.*] Classen and Baiter, following A. B., have *illud iam ipsum*, which affords a good meaning. *Etiam* will indicate extent, *iam*, progress.

XXXIX. § 109. ..... *proinde quasi.*] See above, note on XXI. § 57.

XL. § 110. ..... *post adventum L. Sullae a tribunicia voce desertum.*] A. B. omit *a* and so Classen. The orator here alludes to those ordinances of Sulla, by which he stripped the Plebian Tribunes of all those powers which they had gradually usurped in the course of centuries, and reduced the office to its original simplicity. The Tribunes were reinstated in their former position by Pompeius B. C. 70.

XL. § 110. ..... *desuefactam a concionibus.*] Observe the construction, *desuefactam a.* No other example of this participle is quoted in the dictionaries.

XL. § 110. ..... *iucundior.*] i. e. somewhat of a favourite—*more* of a favourite than he would have been had it not been for this circumstance.

XL. § 110. ..... *suis illis ipsis.*] So all MSS. and edd. except A. B. and Class., who omit *illis*, but *illis* adds considerably to the emphasis. A. B. omit *fuit* also in this clause, but in this instance are not followed by Classen.

XL. § 111. ..... *ad talos demissam purpuram.*] This passage gave rise to an animated controversy between Rubenius, Ferrarius, and the other leading writers *De re Vestiaria.* It cannot reasonably be doubted that Cicero here indicates the *Toga Praetexta* by the word *purpura*, and so the passage was understood by Quintilian (I. O. V. 13, § 39)—*ut adversus Quintium Cicero, non haec solum, sed ipsam etiam praetextam demissam ad talos, insectatus est.* Hence the conclusion that the Tribunes of the Plebs wore the *Toga Praetexta.* But Plutarch in his Roman Questions positively asserts that they did not, and this seems to be confirmed by an expression in the Interrogatio in Vatinium, VII. § 16. Upon examining the passage before us, however, it will be seen that Cicero is not speaking of the conduct of Quintius in his Tribunate, during which he enjoyed uninterrupted popularity, but of his arrogance at a subsequent period (*postea*), when, by the exertions of his supporters, he had climbed to a higher position (*in altiorem locum adscenderat*), i. e. to the Curule Aedileship or to the Praetorship, either of which offices, beyond dispute, entitled the holder to wear the *Toga Praetexta.* This is the explanation suggested by Rubenius, and it appears satisfactory.

XL. § 111. ..... *ubi, si quis ... ita vivit.*] So A. B. and most MSS. Orelli has *vivat*, but the indicative is clearly the proper mood in this passage, and at the beginning of the very next sentence, we have *Si quis autem hoc uno nititur*—where there is no controversy.

XL. § 112. ..... *intolerantia.*] i. e. insufferable arrogance. This word, in Cicero and the best writers, seems to be always employed in the passive sense. In later authors, such as Aulus Gellius, it is used actively to denote impatience.

XLI. § 112. ..... *qui iudicia facta commemoras.*] i. e. you who are always dwelling upon the importance of legal decisions, what do you say to that one?

XLI. § 113. ..... *in concionibus omnibus.*] So all MSS. except A., which omits *omnibus*, and is followed by Classen. Baiter brackets the word.

XLI. § 113. *Iam ergo ... iam ... iam.*] The force of *iam* in these clauses is—now, then, we have arrived at this result.

XLI. § 113. ..... *quaero, quis nocens?*] Every MS. except one has *quaero*, and yet edd. have, for the most part, without any good reason, substituted *quaeso.* A. B. have *qui sit nocens*, Classen prints *quis sit*, but the common reading is unexceptionable.

XLI. § 114. *Aut hoc iudicium reprehendas.*] i. e. the decision of the court in virtue of which Falcula was acquitted. Cicero here places his antagonist in a dilemma. "You," he says, "whose charge against my client seemed to lean for support on the decisions pronounced by courts of justice (*rebus iudicatis*), must now admit one of two things—either, that the decision of the court in the case of Falcula was wrong, in which case the argument which rests upon legal decisions falls to the ground, or, that the decision in the case of Falcula was right, which is equivalent to an admission that bribery was not employed to procure the conviction of Oppianicus." *Tu* is used with a strong emphasis. A. B. have *nitebatur* instead of *niti videbatur*, and so Class. and Bait.

XLI. § 114. ..... *debuerint potius accusari*, &c.] A person accused of *Ambitus* was charged with having *given* money for an unlawful purpose—one accused *De Repetundis* of having *received* money unlawfully. Therefore, if the jurors had been charged with corruption on the trial of Oppianicus, they must have been impeached *De Repetundis* and not *De Ambitu.*

XLI. § 115. ..... *P. Septimio Scaevolae litem eo nomine esse aestimatam.*] The remainder of this chapter is perhaps the most embarrassing portion of the whole speech, the difficulty arising in part from some defect in the text, and in part from our want of precise information regarding the legal process termed *Litis Aestimatio*, of which Cicero, very naturally, affords no explanation, because, as he says, he was addressing persons perfectly familiar with the subject. There is a note of Asconius on In Verr. Act. I. 13, which throws considerable light upon the term, which he thus defines—

Hoc est, pecunia, de qua lis fuit, et propter quam condemnatus est, in summam redacta, quae de eius rebus exigeretur. Duae res enim consequebantur damnationem: pertinebat, qua vel simplex, vel duplex, vel quadruplatio ducebatur: altera exilii.

The latter portion of the note is corrupt, but the meaning is plain enough. Taking this in connection with the few passages scattered through the works of Cicero and other writers, we may arive at the following conclusions.

1. The *Litis Aestimatio*, in criminal trials,[1] belonged, strictly speaking, to those cases only, in which the misappropriation of money by some public servant formed the main charge. Such were impeachments *De Repetundis* and *De Peculatu.* If, for example, a Provincial Governor was found guilty under the *Lex Servilia* of having extorted money from

[1] The term was used also in Civil Suits.

those under his sway, he was not only compelled to go into exile, but also to make restitution of what he had unlawfully seized. The punishment was thus twofold. The jury, after they had brought in their general verdict of guilty, proceeded to determine the amount to be refunded, and this was the *Litis Aestimatio*.

2. In fixing the sums to be refunded they were required to specify on what ground or score (*quo nomine*) each sum was fixed, stating the particulars of the offence for which restitution was to be made.

3. In performing this part of their duty, the jury had frequently an opportunity of modifying the punishment of the criminal. It is evident that when a charge was brought generally *De Maiestate* or *De Repetundis*, there must have been an infinite number of degrees of guilt, and although each of these offences was nominally a *Crimen Capitale*, many cases might occur in which the amount of guilt was so small, or the circumstances so extenuating, that the infliction of a *Poena Capitalis* would have been harsh and unjust. So, in our own courts, a person may be accused and found guilty of *Manslaughter*, but this term comprehends all degrees of culpability between the extreme limit of an act of homicide verging upon wilful murder, and one in which the catastrophe is the result of a slight imprudence. Hence the punishment varies from penal servitude for life to a mere admonition, the amount of punishment, according to the practice of English courts, being determined by the judge. Now, it would appear that the *Judices*, when they stated in the *Litis Aestimatio* on what score (*quo nomine*) they fixed the amount to be paid, might make the offence appear of the most serious or most venial description, and they might even express themselves in such terms as to lay the culprit open to a new impeachment for an offence more serious than that for which he was under trial; but, generally speaking, they were in the habit of leaning to the side of mercy, and saving him from the penalties of a *Lis Capitalis*. In point of fact, we may infer from the expression used in this chapter with regard to Scaevola—*omni contentione pugnatum est, ut lis haec capitis aestimaretur*—that when an individual was found guilty generally of any offence which admitted of many gradations of guilt, it depended upon the nature of the *Litis Aestimatio* whether the *Poena* was to be *Capitalis* or not, the Judices discharging the duty which devolves upon the Judge according to our system.

This being premised, we may now proceed to examine the different clauses in detail.

P. Septimio Scaevolae.] This person was a Roman Senator, one of the jurors on the trial of Oppianicus. He was impeached during the Praetorship of Q. Hortensius (B. C. 72) on a charge *De Repetundis* and found guilty. But although this charge had no connection with his conduct on the trial of Oppianicus (so Cicero says distinctly at the end of the chapter—*aliis criminibus*), but to have been the result of some malversation on the part of the accused in Apulia, the jurors, in their *Litis Aestimatio*, took into account the circumstance that he had received a bribe upon the trial of Oppianicus (*profitetur ... libere se accepisse ... aestimatum*). This is distinctly stated by Cicero himself, In Verr. Act. I. 13—

Cognoscet ex me Populus Romanus ... quid sit, quod, P. Septimio senatore damnato, Q. Hortensio praetore, de pecuniis repetundis, lis aestimata sit eo nomine quod ille ob rem iudicandam pecuniam accepisset.

.... videntur putasse esse.] Two reasons are here assigned which tended to render jurors lenient or careless in the *Litis Aestimatio*.

1. "They believe that the person they have found guilty will look upon them as his personal enemies, and therefore they desire to prove that they are willing to befriend him as far as they can—*si quo in eum lis capitis data est mea admittant*.

2. Thinking that their duty as jurors has been discharged by bringing in a verdict, they are indifferent and careless about the subsequent proceeding—*neglegentius attendunt cetera*.

Itaque et maiestatis.] This is the most desperate sentence in the whole passage. We have given the text of Orelli, which is supported by all MSS. except A. B., but I am unable, without great violence, to twist any satisfactory meaning out of the words.

A. B. insert *maiestatis* before *essent*, and the text stands thus in the edd. of Class. and Bait.—

Itaque et maiestatis absoluti sunt permulti, quibus damnatis de pecuniis repetundis lites maiestatis essent aestimatae, from which the following meaning is extracted—Very many persons having been found guilty when impeached *De Repetundis*, and the jurors in the *Litis Aestimatio* having implied that they were guilty of *Maiestas*, have, when brought to trial for *Maiestas*, been acquitted.

There can be no doubt that this is a distinct meaning, but I hesitate to adopt it, because it appears to me to be completely at variance with the tenour of Cicero's observations. The orator, in the preceding sentence, if I understand it aright, has asserted that the jurors were for the most part loose and lenient in the *Litis Aestimatio*. *Itaque*, he continues, as a proof of this—and then follows the sentence before us, but this, according to the interpretation of Classen, far from being an illustration of the careless leniency of jurors, would be rather a proof of vindictive persecution, since by the terms of their *Litis Aestimatio* they laid open the accused to a fresh charge of a most serious character, and this had happened in the case of very many individuals (*permulti*).

..... ut quos pervenisse pecunias.] When an individual was convicted *De pecuniis repetundis*, and ordered to make restitution, if his property proved inadequate to yield the sum fixed, an inquiry was instituted to discover the persons into whose hands the missing property had passed, and these persons became themselves liable to an impeachment *De Repetundis*. Cicero here adduces as an additional proof of the leniency of jurors, that, after having, in a *Litis Aestimatio*, fixed upon the persons into whose hands the property unlawfully acquired had passed—the receivers, as it were, of the stolen goods—they had refused to convict these persons when brought to trial.

..... ut lis haec capitis aestimaretur.] The meaning seems clearly to be that which we have indicated above—Scaevola was found guilty by the testimony of very many witnesses, upon a charge altogether unconnected with the trial of Oppianicus (*aliis criminibus*). The greatest exertions were made that the *Litis Aestimatio* should be in such terms as to render him amenable to a *Poena Capitalis*. Few will be disposed to adopt the interpretation of Manutius. The greatest exertions were made that the Poena Capitalis involved in this charge (*ut haec lis capitis*), should be commuted for a fine (*aestimaretur*).

However much we may differ with regard to the true interpretation of some of the above clauses, the argument of Cicero is perfectly intelligible.

"One of the facts adduced to prove the guilt of Cluentius is, that the jurors who convicted P. Septimius Scaevola, stated expressly in their *Litis Aestimatio*, that he had received a bribe on the trial of Oppianicus, and this," continues the orator, "my opponents call a legal decision (*iudicium*). But I need not tell you who are so well versed in proceedings of this sort, that a *Litis Aestimatio* is not a legal decision (*iudicium*). In the first place, it is notorious that jurors, after they have brought in a verdict of

guilty, are disposed to be lenient and careless in the *Litis Aestimatio*, and that even when, in the course of a *Litis Aestimatio*, they have indicated the guilt of a third person, they often refuse to convict that person when brought to trial before them. From no point of view, therefore, can a *Litis Aestimatio* be regarded as a *Iudicium*, and it ought not to be called by that name."

XLI. § 116. ..... *hac ipsa lege.*] i. e. the law for repressing judicial corruption.

XLII. § 117. ..... *nunquam neque.*] Observe the double negative.

XLII. § 117. ..... *neque proinde.*] So A. B. and most MSS. But most edd. without any cause have substituted *perinde* both here and below.

XLII. § 117. ..... *animadversionem atque auctoritatem censoriam.*] This is an example of one of these irregular constructions to which grammarians have given the name of *attraction*. *Animadversionem* and *auctoritatem*, which ought to be in the nominative in apposition to *id*, the subject of the sentence, are here *attracted* into the case of the relative *quod*.

XLII. § 117. ..... *huiusce periculi.*] i. e. the danger least the cause of Cluentius might be damaged by the conduct of former Censors.

XLII. § 117. ..... *qui censores proxime fuerunt.*] Cn. Cornelius Lentulus and L. Gellius were Censors B. C. 70, the year in which Cicero conducted the prosecution of Verres. See In Verr. Act. II. v. 7. We read in the Epitome of Livy, XCVIII.—*Cn. Lentulus et L. Gellius censores asperam censuram egerunt quatuor et sexaginta senatu motis.*—See below § 120.

XLII. § 117. ..... *cum altero.*] i. e. with Lentulus; see a few sentences lower down—*a Lentulo autem*, &c.

XLII. § 117. ..... *officiis.*] All the MSS. seem to have *officii*.

XLII. § 117. ..... *necessitudo est.*] On the meaning of this word see note XXXII. § 87. A. B. have *consuetudo*, but even Classen is forced to admit that the common reading is superior. A. B. omit *est* and so Class. and Bait.

XLII. § 118. ..... *de ratione censoria.*] i. e. the nature and character of the power wielded by the Censors, regarded abstractedly without reference to the conduct of particular individuals.

XLII. § 118. ..... *ex hac.*] So A. B., and this reading affords a very satisfactory signification. Most MSS. have *in hac*, out of which Lambinus made *in hoc*, and this was generally adopted by edd. before Classen.

XLII. § 118. ..... *praeterire non possum.*] A. B. have *possim*, and so Class. and Bait.

XLII. § 118. ..... *huius defensionis.*] A. B. have *eius* and so Class.

XLII. § 119. ..... *animadvertisse ... subscriberent.*] From this we see clearly that the *animadversio censoria* was the disapprobation expressed by the Censors which entailed *ignominia*, while *subscriptio censoria* was the written note in which they assigned their reasons for inflicting this disgrace. See more on this, XLV. § 126.

XLII. § 119. ..... *illud commune proponam.*] i. e. I shall enunciate the general proposition.

XLII. § 119. *C. Getam*, &c.] The circumstance here mentioned is repeated by Valerius Maximus in his chapter *De Censoria Nota*, II. ix. 9—

C. Geta, quum a L. Metello et Cn. Domitio censoribus senatu motus esset, postea censor factus est.

Metellus and Domitius were Censors B. C. 115. They are spoken of by Cicero in another place, In Verr. Act. II. i. 55—C. Licinius Geta must have been Censor in B. C. 108, or B. C. 102.

XLII. § 119. ..... *turpi iudicio.*] i. e. A legal decision involving *infamia*, the results of which were much more serious than those which followed the *ignominia* produced by the *animadversio* of the Censors.

XLII. § 120. ..... *quem ... libertus furti condemnarit.*] i. e. shall have accused any one of theft and procured his conviction. *Theft* among the Romans did not involve a criminal prosecution, but any one found guilty of theft was said to be *turpi iudicio damnatus* and incurred *infamia*.

XLIII. § 120. ..... *iudicem.*] Here, as in XXVII. § 74, *iudex* is an umpire or arbiter in a civil suit.

XLIII. § 120. ..... *legibus, quibus exceptum est, de quibus causis.*] i. e. in all laws which contain a prohibitory clause specifying the circumstances which disqualify a person from, &c.

XLIII. § 121. ..... *in selectos iudices.*] So all MSS. and edd. except A. B., Class. and Bait., who have *lectos iudices;* but there can be little doubt that the individuals chosen by the Praetor Urbanus to act as jurors upon criminal trials out of the whole body qualified to serve, were technically designated *Iudices Selecti*. So Hor. S. I. iv.—

Unum ex iudicibus selectis obiiciebat.

Compare Ovid Amorr. I. x. 38. Trist. II. 132.

XLIII. § 122. *Atque etiam ipsi inter se censores.*] The most remarkable example in Roman history of censorial discord took place in the Censorship of M. Livius Salinator and C. Claudius Nero (B. C. 204), who reciprocally animadverted upon and degraded each other. The particulars are given in Liv. XXIX. 37, and Val. Max. II. ix. 6.

XLIII. § 122. ..... *a populo Romano.*] So all MSS. and edd. except A. B., Class. and Bait., who omit *Romano*. But even if the weight of testimony were equal, we should retain *Romano*, for Cicero is here speaking of the people in the formal exercise of their constitutional privileges as Roman citizens.

XLIV. § 123. ..... *utrum, quia censores,* &c.] Let us first decide whether the fact must be considered as certain because the Censors affixed their note, or whether the Censors affixed their note because the fact was certain.

XLIV. § 123. .....*dictatorium gladium.*] So all MSS. except A., which omits *gladium*. The word is retained by Class. and bracketed by Baiter. If we omit *gladium* we must supply *stilum* from the preceding clause.

XLIV. § 124. ..... *unum denique aliquod.*] B. omits *aliquod*, which is retained by Classen and bracketed by Baiter.

XLIV. § 124. ..... *auctoritatem censorum.*] This is the common reading, but A. B. and a large number of MSS. have *censoriam*, and it is extremely probable that *censorum* is the correction of some transcriber who was startled by the *illorum* which follows. Class. and Bait. have *censoriam*.

XLIV. § 125. .....*municipii manu sua.*] So A. B., Class. and Bait., and this reading is certainly more emphatic than *municipii sui*, which is found in all other MSS., and in edd. before Classen.

XLIV. § 125. ..... *pecuniam pro abortione.*] A. and the Cod. S. Vict. have alone preserved this, the true reading, which was first adopted in the second ed. of Lambinus. Almost all other MSS. and most edd. have *pro potione*. The hideous story is narrated in Chapter XII, where the money given is termed *merces abortionis*.

XLIV. § 125. ..... *privigno suo quaereret.*] So all MSS. and edd. except A. B., Class. and Bait., who have *dare vellet* instead of *quaereret*.

XLIV. § 125. ..... *sive voluntas, sive opinio fuit.*] Here *voluntas* must signify a deliberate purpose or exercise of will, *opinio* a fancy, a belief adopted without careful consideration.

XLV. § 126. ..... *ut gravissime dicam.*] So A. B., Class. and Bait. and the earlier edd. Most MSS. and recent edd. have *dicant*, which is scarcely intelligible.

XLV. § 126. ..... *aerarium reliquissent.*] This is the reading of several MSS. and most edd. B. and many MSS. have *aerarium reliquisse subscripserunt*, and so Class. and Bait. A. has *aer. rel. scripserunt.*

But the verb *subscribere* in the proceedings of the Censors, was not employed to denote a fact but a reason. The Censors placed a man among the *aerarii* (*aerarium fecerunt—in aerarios referebant*), and then they attached a written note to his name, assigning their reason, and this note was the *subscriptio*. Hence such a phrase as *aerarium reliquisse subscripserunt*, would be quite inconsistent with the established technicalities. A conviction that there was something irregular in the expression, probably led to the substitution in A. of *scripserunt* for *subscripserunt*. The note of Classen appears to me quite wild. See above, note on XLII. § 119.

XLV. § 126. ..... *inveniretur.*] So A. B. and the great majority of MSS., but almost all edd. before Class. have *reperiretur*. Such a correction is uncalled for, and probably arose from the pedantry of some grammarian who considered the verb *reperior* more appropriate in this passage.

XLV. § 127. ..... *pecunia dicant.*] So nearly every good MS. But almost all edd. before Classen omit *dicant*, which is in no way offensive. On the other hand, these edd. have all *quid ceteri*, although *quid* is omitted in almost every good MS. Edd. vary much in the punctuation also. Orelli has—

Quid est hoc? duos esse corruptos solos pecunia? Quid ceteri? Videlicet gratis condemnarunt? Classen has—

Quid est hoc? duos esse corruptos solos pecunia dicant: ceteri videlicet gratis condemnarunt. Baiter has—

Quid est hoc? duos esse corruptos solos pecunia? Dicant: ceteri videlicet gratis condemnarunt.

XLV. § 127. *Aut illud afferant,...comperisse.*] In this very difficult passage, we have exhibited the text as it is found in the majority of MSS., and in the best early edd. But we are deprived of the aid of a great number of MSS. in which a whole leaf is wanting in this place. Lambinus and Graevius insert the word *non* before *comperisse*, and if we adopt this conjecture, we may extract a satisfactory meaning from the sentence. Cicero, in that case, will say—

I perceive that two only have been officially noted by the Censors as connected with that disgraceful procedure. My opponents must therefore admit one of two things, either that the Censors considered that two only were guilty, or (*aut*), if they are not prepared to admit that, they must at least acknowledge that the Censors had *ascertained* the guilt of two only, and had *not ascertained* the guilt of the rest. For the third supposition cannot be maintained, viz., that, although they were convinced of the guilt of all, they made an example of two only in imitation of military usage.—See next note.

Leclerc and Classen, rejecting *non*, would substitute *sese* for *esse*, an emendation which in itself is obvious and simple, but in that case *afferant* and *sese* must be referred to the Censors. Cicero, however, is not here arguing against the conduct of the Censors, or calling upon them to defend or explain their proceedings, but is endeavouring to prove that these proceedings, if fairly interpreted, cannot be regarded as unfavourable to his cause. Moreover, such an interpretation seems to be quite inconsistent with *Nam illud* and what immediately follows.

XLVI. § 128. *Nam illud...a consuetudine militari.*] The punishment denounced by military law, against the soldier who deserted his post and fled from an enemy, was death. But when a large number of soldiers had been guilty of running away in battle, although each individual was amenable to the punishment of death, it was the custom (*consuetudo militaris*) not to resort to a promiscuous massacre of the whole, but to select by lot a certain number, one in every ten for example, who were executed, while the rest were allowed to escape with their lives.

My opponents, says Cicero, must admit one or other of the above hypotheses, for by no means can recourse be had to that other supposition (*nam illud quidem minime probandum est*), viz. that the Censors, in imitation of military usage, although they knew that many of the jurors were equally guilty, restricted the punishment to two only out of the whole number.

XLVI. § 128. *Quare, ne in bello ... delinqueret.*] Classen, following A. B., reads—

Quare qui in bello propter hostium metum deliquerat—and remarks—Nova haec quam ex egregiis MSS. exhibemus scriptura grave huius loci incommodum sustulit: nam quum vulgata *ne ... delinqueret, amplior ei* cett. homo iam notus cogitandus esset, nullus alius ex superioribus potuit intelligi quam *miles, qui locum non tenuit, qui hostium impetum vimque pertimuit:* quam ridicule nemo non sentit. Iam illud nacti sumus quod opus erat, novam personam eamque apte definitam.

The difficulty discovered by Classen in the common text appears to me imaginary, and the reading which he supports quite inadmissible. The nominative to *delinqueret* is unquestionably *miles*, supplied from the preceding sentence, and is equivalent to *milites*, denoting a soldier or the soldier, not a particular individual, but one taken as a representative of a class. The orator means to say this—Our ancestors felt that a soldier who ran away in battle, might behave better on another occasion, and might, notwithstanding this act of cowardice, prove a worthy man and a good citizen. Therefore (*quare*), on the one hand, to prevent a soldier from shrinking from his duty in the fight, they (our ancestors) held up to him before-hand the terrors of condign punishment in the most comprehensive form, but, on the other hand, when the offence had been actually committed by numbers, they had recourse to an expedient (viz. *sortitio*) which had the effect of saving the lives of a large portion of the offenders, without sacrificing the principle that all had deserved death—the recognition of this principle being the *amplior metus*.

Surely it would be more natural and expedient, to hold up to the soldier the *amplior mortis et supplicii metus* beforehand, in order to deter him from a breach of duty—*ne delinqueret*—than to employ it as an instrument of terror towards one who had actually been guilty of the breach of duty—*qui deliquerat*. And this is what Cicero says most distinctly towards the close of the chapter—*quam conditionem supplicii maiores in bello timiditati militis propositam esse voluerunt*—where *conditionem supplicii propositam timiditati militis* must signify the punishment held up beforehand to the soldier in order to deter him from cowardice.

The orator having thus explained the considerations which guided the ancient Romans, in selecting a few out of a large body of military offenders, goes on to shew that it is absurd to suppose that the Censors, in the discharge of their duty, could have been induced to act in a like manner, there being no real analogy between the cases.

XLVI. § 129. ..... *carpes.*] i. e. select, pick and choose.

XLVI. § 129. ..... *ut velis.*] So all the MSS. Ernesti and Orelli have adopted *ut voles* without any good reason.

XLVI. § 129. ..... *affici convenire? Aut quam,* &c.] There is considerable variation in the MSS. here. A. B. and the majority have *affici oportere convenire*, several, however, and among these C., omit *oportere;* A. B. have *ut ad quam;* C., *aut quam*. Classen has recourse to conjecture and arranges his text as follows—*poena affici oportere. Convenit ne, ut quam,* &c. We have adhered to the reading of the Turin Palimpsest, which is quite satisfactory.

XLVI. § 129. ..... *atque hominum.*] C. has *et hominum*, all other good MSS. *ad hominum.*

XLVI. § 129. ..... *ad ignominiam et turpitudinem.*] C. omits the words *et turpitudinem.* They are retained by Classen and bracketed by Baiter.

XLVII. § 130. ..... *ventum quendam popularem.*] See note on XXVIII. § 77.

XLVII. § 130. ..... *a tribuno seditioso.*] The words are omitted in C. They are retained by Classen and bracketed by Baiter.

XLVII. § 130. ..... *multitudini; nemini licitum.*] This, which is unquestionably the true reading, is found in the Turin Palimpsest alone. All other MSS. have *multitudinem illicitum*—a manifest corruption. See Prolegg. § 13.

XLVII. § 130. ..... *illa iudicia.*] sc. *Senatoria,* those iuries composed of Senators exclusively.

XLVII. § 130. ..... *notatione tabellarum.*] Cicero alludes to a scandalous transaction which took place at the epoch here referred to. A certain number of jurors, in a criminal trial, had, in consideration of a bribe to be received, pledged themselves to vote in a particular manner. In order to secure their fidelity, and to ascertain that they had actually fulfilled their engagement, the suborners furnished each of the corrupt jurors with a voting ticket, marked in a particular manner with coloured wax, so that the person who took the *tabellae* out of the ballot-box, was able to ascertain whether the individuals who had received the prepared tickets had made use of them. We find several allusions to this business in the Verrine orationi—e. g. Divin. XII—ceratam unicuique tabellam dari cera legitima, non illa infami ac nefaria—and again In Verr. Act. I. xiii. 40—Iam vero quomodo illam labem, ignominiam, calamitatemque totius ordinis conquerar? Hoc factum esse in hac civitate, quum Senatorius ordo iudicaret, ut discoloribus signis iuratorum hominum sententiae notarentur.

XLVII. § 130. ..... *tabellarum.*] So C. All other MSS. have *tabularum.*

XLVII. § 130. ..... *illo ipso tempore.*] i. e. B. C. 70 by the *Lex Aurelia.*

XLVII. § 130. ..... *illa iudicia reprehendisse.*] Here again the Turin Palimpsest alone has preserved the true text. All other MSS. have *illa iudicia cum equestri ordine reprehendisse*—which is nonsense.

XLVII. § 131. ..... *ista subscriptione.*] Here *ista* is a conjectural emendation of Ernesti. All MSS. and previous edd. have *ipsa*, which is inadmissible.

XLVII. § 131. ..... *P. Popillium.*] This is a conjectural emendation of Fulvius Ursinus. All the MSS. have *L. Popillium.* See above, XXXVI. § 98, and note.

XLVII. § 132. ..... *relinquit.*] This is a conjectural emendation of Lambinus. All MSS. have *reliquit.* The change does not seem to be indispensable.

XLVIII. § 133. ..... *turpitudinem,* &c.] We have a descending climax in the words—*turpitudinem—vitium—erratum.* The Censors affixed their note to the name of Cluentius on account of no act of baseness, of no moral defect, not even on account of a want of judgment on his part, but merely to maintain their own consistency.

XLVIII. § 133. *Qua de re tota.*] A. B. omit *tota.* It is retained by Classen and bracketed by Baiter.

XLVIII. § 134 ..... *exemplum ... P. Africani.*] Scipio Aemilianus and L. Mummius were Censors B. C. 142. The story here referred to is told by Valerius Maximus in his chapter *De Moderatione,* IV. i. 10—

Ne Africanus quidem posterior nos de se tacere patitur. Qui censor ... centurias recognoscens equitum, postquam C. Licinium Sacerdotem citatum processisse animadvertit, dixit se scire illum verbis conceptis peierasse. Proinde, si quis eum accusare vellet, usurum testimonio suo. Sed nullo ad id negotium accedente, "Transduc equum," inquit "Sacerdos, et lucrifac censoriam notam, ne ego in tua persona et accusatoris et testis et iudicis partes egisse videar."

XLVIII. § 134. ..... *si qui contra dicere vellet.*] i. e. if any one was willing to come forward as the accuser of Licinius. Africanus offered to give evidence against Licinius if any one chose to impeach him, but he did not choose to come forward himself in the character of an accuser.

XLVIII. § 134. ..... *sua scientia.*] So the great majority of MSS. The common reading is *conscientia,* but the change is unnecessary. Indeed *conscientia* properly signifies the inward knowledge which we possess with regard to ourselves and our own doings.

XLVIII. § 134. *Quod si hoc Habito facere licuisset.*] i. e. If Habitus had been treated by the Censors as Licinius was by Africanus—if they had refrained from animadverting upon him when there was no accuser and no evidence.

XLVIII. § 135. ..... *conturbat.*] In this paragraph, Classen and Baiter, following A. B., read—*perturbat—condemnationem—adiungeret*—instead of—*conturbat—damnationem—coniungeret*—changes altogether unimportant.

XLVIII. § 135. ..... *elogium recitasti de testamento.*] i. e. a clause from the will of Cn. Egnatius—*Elogium* seems to denote generally, a short exposition of a fact or of an opinion, whether favourable or unfavourable. It occurs occasionally in Cicero in the sense of an epitaph (De Finn. II. 35. In Pison. XXXIX. 72. Tusculan I. 14. See also De Senect. 61—73).

In Plautus it signifies an amatory compliment chalked by a lover on the door of his mistress—Mercat. II. iii. 74—

Impleantur elogiorum meae fores carbonibus.

From signifying, as it does here, a clause in a will, it is found in the legal writers, in the sense of a will.—See also Sueton. Calig. 24. Claud. 1. Galb. 3.

There is no Greek word ἐλόγιον, and hence different grammarians have supposed *elogium* to be formed from ἐλλόγιον, or, ἐυλογεῖον, or, ἐκλογεῖον.

XLVIII. § 135. ..... *honestissimi videlicet.*] *Videlicet* communicates an ironical force to the epithets.

XLVIII. § 135. *Sed tu, Atti, consideres,* &c.] This affords a good example of the *dilemma.*

XLVIII. § 135. ..... *quem pater censoria subscriptione exheredavit.*] i. e. whom his father disinherited in consequence of the note of the Censors—*subscriptione* is the ablative of cause.

XLIX. § 136. *At enim senatus universus.*] When any new or particularly atrocious crime had been committed, for the punishment of which sufficient provision had not been made by existing laws, the senate, on the motion of a magistrate, were wont to pass a resolution that the person accused should be tried by a special commission, armed with special powers—*ut extra ordinem de facinore quaereretur*—and, if this resolution was ratified by the people, a special bill was brought in for regulating the trial. We have a good example of a procedure of this nature, in the measures adopted after the death of Clodius, for the impeachment of Milo, which are fully detailed in the Argument of Asconius to the speech *Pro Milone.*

XLIX. § 137. ..... *L. Lucullus,* &c.] Lucius Licinius Lucullus and M. Aurelius Cotta were consuls B. C. 74, and M. Terentius Varro Lucullus and C. Cassius were consuls the year following.

XLIX. § 137. ..... *in quos ... idem illud senatus decreverat.*] i. e. on whom the senate had devolved the same duty. The phrase *decernere in aliquem* here signifies, to impose upon a magistrate the task of carrying into effect a decree of the senate. The senate had instructed L. Lucullus, when consul, to propose a law in terms of their resolution, but he having failed to do this, they imposed the same task upon M. Lucullus and C. Cassius, as part of their duty for the following year.

All MSS. except A. B. have *decreverit,* which is a manifest solecism. The mistake arose from the ellipse of *tulerint* after *M. Lucullus et C. Cassius,* the transcribers fancying that *decreverit* was required to correspond with *tulerit.* Lambinus made the necessary correction, but *decreverit* was the common reading until the ed. of Classen.

XLIX. § 137. ..... *et quod tu Habiti pecunia factum esse arguis.*] i. e. and with reference to that circumstance which you maintain, was brought about by the money of Habitus.

XLIX. § 137. ..... *vel tenuissima.*] This is a misprint. It ought to be *ulla tenuissima,* which is the reading of all MSS. *Ulla vel tenuissima* is a conjectural emendation adopted by Ernesti and Orelli.

XLIX. § 137. ..... *id postea.*] The repetition of *id* is somewhat awkward, being equivalent to the that, I say, by which a modern orator endeavours to disentangle an involved period.

XLIX. § 137. ..... *L. Quintii tribuni plebis.*] The words *tribuni plebis* are omitted in A. B., are retained by Class. and bracketed by Baiter.

XLIX. § 137. ..... *referendum ad populum.*] So A. B. All other MSS. have *perferendum*. Orelli, who adopts *referendum*, interprets it, denuo, rursus referendum, maintaining that *referre ad populum* is never used by the earlier and purer writers as equivalent to *ferre ad populum*.

XLIX. § 138. ..... *ut mare*, &c.] The same simile expressed in almost the same words is found in Liv. XXVIII. 27, in the speech of Scipio to some mutinous soldiers—

Multitudo omnis, sicut natura maris, per se immobilis est, venti et aurae cient: ita aut tranquillum, aut procellae in vobis sunt: et causa atque origo omnis furoris penes auctores est, &c.

L. § 138. *Est etiam reliqua.*] On the statements and arguments contained in this chapter. See Prolegg. § 10.

L. § 138. .....*quae probata non essent.*] i. e. which had given dissatisfaction. See above, note on III. § 8.

L. § 138. ..... *tum aliorum.*] All MSS. have *illorum*. *Aliorum* is a conjecture of Ernesti, adopted by Orelli, Classen and Baiter. The latter following A., reads *quum* instead of *tum*, and so Baiter.

L. § 138. ..... *in illo tempore.*] *in* appears to be unnecessary, and is omitted in A. B.

L. § 139. *Sed errat vehementer*, &c.] Cicero, surely, makes a grave mistake when he adopts such a line of apology. It is a serious error in judgment to urge, in this place, that pleaders must be allowed a certain degree of license, and must be permitted to dress up their statements so as to meet the exigencies of the cause in hand. For, although this is very true, and although every one knows that this takes place, yet when the jury were reminded of it during the course of the trial, their confidence in the representations which the advocate was actually making must have been shaken—they could scarcely avoid applying the principle here laid down, to the speech he was delivering as well as to former orations. It seems clear that the orator ought to have confined himself to the plea indicated at the close of the next chapter, namely, that he had spoken upon former occasions, according to the voice of popular report, without having himself investigated the facts, but that a careful inquiry into these had fully convinced him, that the opinions so hastily adopted were erroneous. This would have been reasonable and satisfactory. Cicero was probably led away by his extreme sensitiveness.

L. § 139. ..... *auctoritates nostras consignatas.*] i. e. my deliberate opinions formally recorded.

L. § 139. *Omnes enim illae orationes.*] B. omits the words *illae orationes*, A. *orationes* only. Classen follows B., Baiter A. One or both of these words may possibly have been placed in the margin by some transcriber as an explanation, and so have crept into the text, but the proposition would scarcely be distinct if both were omitted.

L. § 140. ..... *M. Antonium... L. Crassi.*] The persons here named are M. Antonius the grandfather of the triumvir, and L. Licinius Crassus, frequently designated for the sake of distinction *Orator*. These two were regarded as the brightest examples of Roman eloquence, until their fame was eclipsed in the next generation by the superior splendour of Cicero, who frequently speaks of both in terms of the warmest admiration. Thus in the Brutus XXXVI. § 138—

Nunc ad Antonium Crassumque pervenimus ... Ego sic existumo hos oratores fuisse maxumos et in his primum cum Graecorum gloria Latine dicendi copiam aequatam.—He then proceeds to give the characteristics of each and to compare their powers.

Meyer in his *Oratorum Romanorum fragmenta* (Turic. 1842), has collected all the testimonies of ancient authors concerning Antonius and Crassus, together with the few fragments which have been preserved of their speeches.

L. § 140. ..... *idcirco se nullam.*] This is the reading of nearly all the MSS., but the edd. before Classen exhibit—*idcirco se nullam unquam orationem scripsisse, ut, si quid aliquando quod non opus esset, ab se esset dictum, posset se negare dixisse*—a reading which appears first in the Iuntine edition, and seems to have been derived from conjecture.

L. § 140. ..... *proinde quasi, si quid a nobis*, &c.] So A. B., Class. and Bait. All other MSS. and edd. omit *si*, which is perhaps unnecessary. Lambinus has *quod*.

LI. § 140. ..... *accusante M. Bruto.*] This is the M. Iunius Brutus of whom Cicero speaks so disrespectfully in the Brut. XXXIV. § 130—

Isdem temporibus (i. e. about B. C. 100) M. Brutus, in quo magnum fuit, Brute, dedecus generi vestro: qui quum tanto nomine esset patremque optimum virum habuisset et iuris peritissimum, accusationem factitaverit, ut Athenis Lycurgus: is magistratus non petivit sed fuit accusator vehemens et molestus, ut facile cerneres naturale quoddam stirpis bonum degeneravisse vitio depravatae voluntatis.

Elsewhere (De Off. II. 14), he tells us that this person was nicknamed *The Accuser* from his eagerness in instituting prosecutions—sordidum ad famam, committere, ut *accusator* nominere: quod contigit M. Bruto, summo genere nato, illius filio, qui iuris civilis in primis peritus fuit.

The father, mentioned in the above passage and in many others as an eminent lawyer, is noticed in this chapter as *M. Brutus pater illius* ACCUSATORIS. These Bruti seem to have belonged to the same family as M. Iunius Brutus the τυξαννοκτόνος, but it is difficult to trace the relationship.

LI. § 140. ..... *Cn. Plancum.*] There can be no doubt that this is the person mentioned by Quintilian (VI. 3) and by Cicero, De Orat. II. 54. In the latter passage he is called *Cn. Plancus*, here the MSS. give the praenomen C. or L., and in Quintilian C. or CN. Nearly all the MSS. however, agree in *Plancus*, although the form *Plancius* has been adopted by most edd.

LI. § 140. ..... *qui quum Cn. Plancum defenderet, ... dicitur.*] *Qui* is the nominative to *dicitur*, the numerous intervening clauses being subsidiary or parenthetical.

LI. § 140. ..... *in dissuasione*, &c.] The place here spoken of is Narbo Marcius (*Narbonne*), the chief city of Gallia Narbonensis, and is thus characterised by Cicero, Pro Fonteio I. § 3—

Est in eadem provincia Narbo Marcius, colonia nostrorum civium, specula populi Romani, ac propugnaculum istis ipsis nationibus oppositum et obiectum.

A Roman colony was first planted at Narbo B. C. 118, in the consulship of M. Porcius Cato and Q. Marcius Rex (Velleius I. 15), from the latter of whom the epithet *Marcius* was derived.

A proposal to lead a second colony to Narbo was made by Crassus the orator somewhere about B. C. 111, but a *rogatio* supported by the senate was brought in to oppose the measure, and on this occasion Crassus did all in his power to depreciate the authority of the senate. He succeeded in carrying his point, and the colony was accordingly led forth by himself. These facts are established by comparing the passage before us with Brut. XLIII. § 160.

LI. § 140. ..... *in suasione legis Serviliae.*] This was a law proposed by Q. Servilius Caepio, consul along with C. Atilius Serranus B. C. 106, enacting that the right of acting as jurors on criminal trials, which had belonged to the Equestrian Order exclusively since the passing of the Lex Sempronia in B. C. 122, should be divided between the senate and equites. If the *Lex Servilia Iudiciaria* was actually passed, which is uncertain, it must have remained in force for a very brief period. See Brut. XLIII. § 161.

LI. § 140. ..... *illorum iudicum.*] i. e. the jurors of that period, viz., the members of the Equestrian Order.

LI. § 141. ..... *honeste scribere.*] i. e. with decency. Cicero himself tells us (De Off. I. xxxv. 129) what the practice of his countrymen in these matters was—

Nostro quidem more cum parentibus puberes filii, cum soceris generi non lavantur.

LI. § 141. ..... *cum id aetatis filio.*] Remark the curious elliptical idiom. So we find elsewhere in Cicero—*tamen ita viximus et id aetatis iam sumus—id aetatis hominem longo sermone retinere.*

LI. § 141. ..... *eas se tamen.*] A. B. omit *se* and so Class. There is undoubtedly an awkwardness in employing *se* here, referring, as it does, to a person different from the one indicated by *se* in the clause immediately preceding.

LI. § 141. ..... *libris ... tabulis ... censu.*] Here *libri* are the *books* of Brutus in a literary sense; *tabulae* are his *books* in a mercantile sense; *censu* the registration of his property, the *books* of the censor.

LI. § 141. ..... *se in iis orationibus reprehensum.*] Observe the force of *in* in this clause—that he had been censured on account of expressions employed in those speeches which he had

delivered upon public matters—*de republica* is emphatic; Cicero wishes to imply that want of consistency in *judicial orations* was a matter of no consequence.

LI. § 142. ..... *tempore ... causa.*] He refers here to the Verrine Orations.

LI. § 142. ..... *si quam huc graviorem*, &c.] So all MSS. except A. B., which have *huic*, which will depend upon *graviorem*. Classen, who adopts this reading, argues that *gravior opinio* taken absolutely cannot signify an unfavourable opinion, but few scholars will doubt that such a meaning when attached to the phrase *graviorem de illo iudicio opinionem* has nothing strange or startling. In II. § 6. A. B. have in like manner *huic ... afferatis*, where Classen himself retains *huc.*

LII. Cicero having completed his reply to all those charges against Cluentius, which were connected with the conviction of Oppianicus, now proceeds to demonstrate that he might, had his client permitted him, have declined to enter upon this topic at all, and might have contented himself with pleading that Cluentius being merely a member of the Equestrian Order, was not amenable to that portion of the Lex Cornelia which treated of judicial corruption, that chapter being applicable to Roman Senators only. See Prolegg. § 7. § 8.

LII. § 143. ..... *lege defensurum ... praesidio legis defendere.*] i. e. taking advantage of the strict letter of the law.

LII. § 143. *Cui ego autem.*] A. B. omit *autem*, which is retained by Class. and bracketed by Baiter. B. omits *ego* also.

LII. § 143. ..... *causam defendisse.*] All MSS. have *defendissem*, which in many is followed by *hac si lege.* But *ac si* which is appropriately construed with *secus* is found in the best MSS., and if we read *ac* then *defendissem* is inadmissible.

LII. § 143. ..... *ut hominem confirmare oportet.*] i. e. in so far as it becomes a man to speak confidently in such a matter. This clause is intended to soften down the somewhat arrogant tone of the assertion—*Certe nullus est locus a me ... praetermissus.*

LII. § 144. ..... *capitis periculum.*] So A. B. and the Cod. S. Vict. All the rest have *a capite*, which here is out of place.

LII. § 144. ..... *sed utor instituto meo.*] But I am acting in accordance with the rule I have laid down for my guidance when appearing on behalf of a client.

LII. § 144. ..... *ne sese.*] A. B. have *ne se* and so Class. and Bait. All other MSS. have *ut ne sese.*

LII. § 144. ..... *viderentur.*] So all MSS. and edd. except A. B., Class. and Bait. who have *videbantur.*

LII. § 145. ..... *neque enim.*] i. e. I complied with the wishes of Cluentius, and I must explain why I did

so, FOR (*enim*) we advocates ought not in all cases to yield to our clients. *Enim* here indicates an *aposiopesis*—see above, XXVI. § 70. XXXIII. § 89.

LIII. In the edd. before Classen, the 52nd chapter ends with *perorassem*, and the 53d commences with *Neque me illa oratio commovet*. If, however, we adopt the reading *commoverat* as found in A. B., and most of the best MSS., a close connection is thus established between this clause and the one immediately preceding, and accordingly *Quodsi nihil aliud* ought to form the commencement of chapter 53.—*Commovet* is, however, the reading of C. and is retained by Baiter.

In these sentences A. B. have *fuisset actum*, and A. B. C., *obtineremus* instead of *esset actum* and *obtinerem*, which are the readings of all other MSS. The latter is unnecessary, but the former seems to be required here, the meaning being—if there had been no other object in view except to gain this case. Baiter takes the opposite view, for he reads *esset actum* and *obtineremus*.

LIII. § 146. *Mens ... animus ... consilium ... sententia.*] Although it may be difficult in many cases to define the exact force of some of these words, it would appear that, strictly speaking, *animus* comprehends all the intellectual powers generally; *mens* is more especially the reasoning faculty; *consilium*, a fixed plan or purpose, the result of thought and reasoning; *sententia*, a mental conviction expressed in word or deed.

LIII. § 147. ..... *Q. Naso.*] See Prolegg. § 9.

LIII. § 147. ..... *quasi mente quadam regi legis.*] Orelli approves of the explanation of Weiske—Verbum *mente* bis est cogitandum, *mente quadam, legis* sc. mente—but this is by no means correct. Cicero means to say that as the bodies or actions of men are regulated and controlled by their *Mens* or reasoning faculties, so the proceedings of this and every other trial are regulated and controlled by *Lex*. *Lex* is to *Iudicium* what *Mens* is to *Homines*. The correct translation of the passage is therefore—I hold that the whole of this trial is regulated and controlled by the Mind, if I may so call it, of Law. *Quadam* is introduced merely to qualify the somewhat startling expression *mente legis*.

LIII. § 147. ..... *inter sicarios.*] See above, note on VII. § 21.

LIII. § 147. ..... *reliquae quaestiones.*] i. e. *De maiestate, De falsis*, &c.

LIII. § 148. ..... *apud me.*] i. e. in my court, in the court in which I act as judge in cases *De Repetundis*.

LIV. § 148. ..... *quid agatur.*] Mark what is being done, i. e. what the object and scope of this argument is—to what the recognition of this principle will lead. So below, LV. § 152—*Nec quidquam agitur, mihi credite iudices ... nisi ut*, &c., and above, LIII. § 145—*Quodsi nihil aliud fuisset actum*, i. e. If I had had no other object in view See also LVI. § 153, LXIII. § 177, LXV. § 183.

LIV. § 148. *Infinitum est.*] i. e. There is no restriction or limit as to the persons amenable to this chapter of the Law—it applies to every one whoever he may be (*quicunque*).

LIV. § 148. *Quid eadem lex statim adiungit?*] i. e. what are the terms of that portion of the law which immediately (*statim*) follows—of the next chapter of the Law, that which treats of conspiracies. In this chapter how different is the wording: here the Law is no longer applicable to any whomsoever (*quicunque*), but particular classes of persons are enumerated and specified.

LIV. § 148. ..... *nominavit.*] This is the reading of the best MSS. The nominative to *nominavit* is *lex*. Orelli, without authority, reads *nominantur*, and adds—perfectum omnino locum non habet. A. has *nominarat*.

LIV. § 148. QUI EORUM COIIT.] A. B. and many MSS. have COIT, and so Classen.

LIV. § 148. *Qui eorum. — Quorum?*] Orelli and many other edd. print the words *Qui eorum* in capitals as if they formed a continuation of the law which Cicero is quoting. But the orator is merely repeating the first two words of the clause which he had already quoted, in order to call attention to them. I have, therefore, printed them in the text in Italics.

LIV. § 148. *Quid interest.*] A. B. have *intersit*, and so Class. and Bait. The question is simply one of punctuation.

LIV. § 148. *Si item.*] A. B. have *idem*, and so Class. and Bait.

LIV. § 148. QUIVE IN SENATU.] B. D. have INVE SENATU, and so Class. and Bait.

LIV. § 149. *Quis ergo est Cluentius? Qui tamen defendi causam suam lege nolit.*] Classen has placed a note of interrogation after *nolit* and not after *Cluentius*, and earnestly supports this change. But his arguments appear to me destitute of weight. The meaning and the symmetry of the passage are evident. Cicero begins by asking (*Num*, &c.)—Is Cluentius a person answering this description? Assuredly not. Who then is Cluentius? Whoever he may be, he is at all events (*tamen*) one who does not choose to take advantage of the strict letter of the law in his own favour.

LIV. § 149.] ..... *se re ipsa.*] A. B. omit *se* and so Classen, but it ought to be retained, for it is emphatic; *sua* and *se* in this clause corresponding to *mea* and *me* in the following clause—HIC SUA *putat interesse*, SE *re ipsa ... defendi:* EGO *autem* MEA *existimo interesse*, ME *nulla in disputatione ... videri esse superatum*.

LIV. § 149. ..... *quae a me desiderari arbitror.*] A. B. have *quae te a me desiderare arbitror*, and so Classen, but it appears to me that this change entirely destroys the meaning of the sentence. Cicero declares that he had yielded to the request of Cluentius, and had agreed to waive the plea that he was not amenable to the law. But he goes on to declare that, although he had adopted this course upon this particular occasion in

deference to the wishes of his client, he cannot allow his audience to suppose that he acquiesced in the doctrine broached by Attius, and that he feels himself bound to refute his arguments. With this refutation he is occupied in the five chapters which follow, but before commencing, he again warns the jury that he does not mean to insist upon this plea on behalf of his client.—

Wherefore, Cluentius, I comply with your wishes in so far as you yourself are concerned, I do not read over the law, although this alone would suffice for your acquittal, nor in this place (i. e. in the portion of the speech which immediately follows) do I plead for you, but I will not leave out (I will not refrain from stating) those things which I think are expected and wished for from me (by my audience). It is clear that *te* cannot refer to Cluentius, for Cicero is here impressing upon those he addresses that it was the wish of Cluentius that he should pass over this plea—*te* cannot refer to Attius, for it would be absurd to say that Attius was longing for the refutation of his own arguments.

LV. § 150. ..... *ut id iniquissimum esse confitear.*] Here *ut confitear* signifies supposing that I were to admit.

LV. § 150. ..... *eis ... iis.*] *eis* is here equivalent to *talibus*. In the next clause A. B., instead of *iis* have *his*, which is, perhaps, more distinct.

LV. § 150. *Deinde quis unquam hoc senator accusavit...uti non oportere.*] All recent edd., with the exception of Class. and Bait., adopt this reading, but it is doubtful whether *non* is to be found in any MS., and it certainly ought to be omitted. The meaning clearly is—What senator, after having attained by the favour of the Roman people to a more elevated position in the social scale (than his fellow countrymen) ever complained of this (viz.), that, in consequence (of his elevation), he must submit to more severe legal restraints (than those below him in rank).

The use of *accusavit* for *conquestus est* is singular, and the whole combination is so harsh that, in all probability, some corruption lurks in the text.

LV. § 150. ..... *amplitudinis commodo.*] Almost all edd. have *commodis*, which is found in one MS. only.

LV. § 150. ..... *easdem vitae conditiones.*] *Vitae conditiones* are the liabilities and responsibilities attached to particular stations in life, the terms, as it were, on which we occupy a certain station in life. See again in LVI. § 154—*ea conditione proposita*, and § 155—*Quae si vobis conditio placet.*

LV. § 150. ..... *qui summum locum ... adscendere.*] So A. B. and many of the best MSS. Most edd. have *in summum locum*. For the construction of *adscendere* without *in*, see De Divin. I. xxviii. 58. De Amicit. xxiii. § 88. Caes. B. G. I. 21.

LV. § 151. ..... *hanc ipsam legem*, NE QUIS, &c.] This is the *Lex Sempronia* spoken of in the following chapter, § 154. Both here and there it is described as similar in its provisions to that part of the *Lex Cornelia*

which treated of judicial corruption, and therefore applicable to senators only. We must suppose that this law was passed by C. Gracchus before he carried his *Lex Iudiciaria*, by which the right of acting as jurors was transferred from the senate to the equestrian order: for it would manifestly have been absurd to have passed a law for the suppression of judicial corruption in a body, the members of which were debarred from exercising the functions of jurors, unless, indeed, we suppose it to have applied to the presiding judge only. I am not aware that this law is mentioned anywhere except in these passages.

LV. § 151. ..... *omnem illam acerbitatem proscriptionis suae.*] The meaning seems to be—If Sulla could have ventured to extend the application of his new law so as to make it retrospective, he would gladly have concentrated the whole severity of his persecution of the old jurors (the members of the equestrian order) upon this new *Quaestio:* i. e., he would have made this new *Quaestio* the instrument of wreaking his vengeance upon the equestrian order which he abhorred.

LV. § 151. ..... *qua est usus.*] This is a conjectural emendation of Manutius. All the MSS. have either *quaestus* or *questus.*

LV. § 152. *Nec nunc quidquam agitur.*] See note on LIV. § 148.

LV. § 152. ..... *si constitutum est.*] So all MSS. and earlier edd. But most recent edd. before Classen, following Lambinus, have *si sit constitutum*, which is less appropriate, for the indicative here denotes the certainty felt by the persons referred to, that their wishes would be accomplished. Baiter has *sit.*

LV. § 152. ..... *qui rem iudicarent.*] This also is the reading of all MSS., and will indicate generally *the class of men acting as jurors.* Orelli and some other edd. have *iudicarint*, which is perhaps more emphatic, since it would imply that all who had at any time acted in the capacity of jurors would be liable to prosecution.

LVI. § 153. ..... *M. Druso, tribuno plebis, restiterunt.*] M. Livius Drusus, when tribune of the Plebs, B.C. 91, introduced, among his other measures, a *Lex Iudiciaria*, which appears to have consisted of two parts. The object of the first part was to effect a compromise between the senate and the equestrian order in regard to the *Iudicia*. It provided that three hundred new members should be added to the senate, all of whom were to be selected from the equestrian order, and that out of the whole body of the senate, thus constituted, the *Iudices* should for the future be chosen. The second part, which is the portion alluded to in the text, provided that criminal proceedings might be taken against *Iudices* for receiving bribes. The words of Cicero, (Pro Rabir. Post. 7)—*M. Druso unam in equestrem ordinem quaestionem ferenti*, SI QUIS OB REM IUDICATAM PECUNIAM CEPISSET, *aperte equites Romani restiterunt*—compared with the passage before us, make it probable, that this second part of the law was intended to be retrospective in its operation, the corruption of the Equites, for some years previous, having been notorious. Public morality must have been in a frightful state when such a measure was specially called for, and openly resisted upon such pretexts as those alleged by Cicero.

The whole of the laws of Drusus were summarily annulled immediately after his assassination, on the plea that they had been passed informally.

The principal authorities for this most obscure section of Roman History are—Cic. de Legg. II. vi. 12. Pro Cornel. frag. 11, and note of Asconius. Orat. pro Dom. XVI—XIX. Liv. Epit. LXX. Velleius II. 13. Aurel. Vict. de viris ill. 66. Appian. B. C. I. 35.

LVI. § 153. ..... *nobilitate.*] *Nobilitas* has here the same signification as the English word *nobility*, viz., the persons who form the aristocracy.
Classen has collected examples from In Verr. Act. II. iv. 37, § 81. Pro Rabir. perd. reo VII. § 21. Sallust. Iug. XIII. Liv. IV. 51. VI. 5.

LVI. § 153. ..... *huiuscemodi ordinis.*] This is the reading of most MSS., but *huiuscemodi* is here quite unintelligible: *eiuscemodi*, which is found in A. B., is no improvement. This portion of the speech is altogether wanting in many MSS. Baiter reads—*robora Populi Romani equestrisque ordinis.* Klotz has—*ceterique eiusdem ordinis.*

LVI. § 153. ..... *amfractu.*] This word is not found in any MS., but it is uncertain by whom it was introduced into the text. Classen brackets it. Baiter omits it entirely.

LVI. § 154. ..... *petitionem.*] *Petitio* is here used absolutely to denote the act of soliciting from the people a public office—but *honorum* may be supplied from the *ad honores petendos* of the preceding clause.

LVI. § 154. ..... *iniquum.*] So nearly all the MSS., and the word is certainly more appropriate than *indignum*, which is the common reading.

LVI. § 154. ..... *insignia.*] This word, although found in all MSS., has the air of an interpolation. Baiter brackets both *insignia* and *exercitus*. We find a passage exactly parallel in the speech, Pro Rabir. Post. VII. § 16—
Delectat amplissimus civitatis gradus, sella curulis, fasces, imperia, provinciae, sacerdotia, triumphi, denique imago ipsa ad posteritatis memoriam prodita.

LVII. § 155. ..... *populum Romanum aliud nunc agere.*] i. e. are otherwise occupied—have their thoughts and attention turned in a different direction—are not jealously watching any threatened invasion of their privileges. So below, LXIV. § 179—*Oppianicum aliud agentem, ac nihil eiusmodi cogitantem.*

LVII. § 155. ..... *per paucos iudices adstringatur.*] By you, namely, whose decision in this particular case will have an universal application.

LVII. § 156. ..... *qua lege.*] A. B. omit *lege*, and so Class. and Bait. It adds, however, somewhat to the solemn emphasis of the clause.

LVII. § 157. ..... *in hominum periculis.*] So A. B. and one other MS. All the rest have *omnium* which is clearly wrong, although adopted by most edd. See VI. § 17.

LVII. § 157. ..... *hoc vero quum incertum et infinitum, tum obscurum et occultum est.*] A. B. and the greater number of MSS. omit *incertum et*, and A. B. omit *est* also. This is a clause in which transcribers would be so exceedingly apt to make an error that MS. authority, unless there were no discrepancy, is comparatively of little weight. The phrase is certainly more rotund as presented by Lambinus, Ernesti, and Orelli whom we have followed.

LVIII. § 158. ...*religioni...vestrae...pareatis.*] i. e. the sanctity of your oath.

LVIII. § 159. *Est enim sapientis iudicis, cogitare.*] Many of the earlier edd. have *Est enim sapientis iudicis meminisse se hominem, cogitare*, &c., a reading which is supported by A. B., but which is with justice rejected by all recent edd., including Classen and Baiter.

LVIII. § 159. ..... *non se putare esse solum.*] A. B. have *non se reputare solum esse*, and so Class. and Bait.; but *reputare* seems less appropriate here than the simple verb.

LVIII. § 160. ..... *pro rei publicae dignitate.*] A. B. and a few other MSS. have *rei dignitate*, and so Class. and Bait. But the word *publicae*, when it forms a part of the combination *Res Publica*, is frequently abbreviated in MSS. into a single letter, and here is much more likely to have dropped out than to have been interpolated. Everything connected with a matter of this importance might justly be said to affect the character of the state.

LIX. § 160. ..... *potuerunt.*] A. B. have *potuerint*, and so Class. and Bait.

LIX. § 161. ..... *Decio.*] A. B. and many MSS. have *Decidio*, and so Class. Baiter, following E., has *Decitio.*

LIX. § 161. ..... *ab huius familia.*] i. e. familia servorum. i. e. servis.

LIX. § 161. ..... *dixistis.*] This should be *dixisti*, which is the reading of most MSS. A. B. have *dixit*, which Classen supposes to be a mistake for *dixti*. *Dixistis* is a conjectural emendation of Manutius, adopted by Lambinus, Orelli and Baiter.

LIX. § 161. ..... *incommodissimis.*] So A. B. and many other MSS. A few have *incommodis*, and so Orelli.

LIX. § 161. ..... *huius villicos.*] A. B. and most MSS. have *villicum*, but two lines below, all agree in *villici.*

LIX. § 162. ..... *IIS* xxx, &c.] It would appear that the legacy which the testator intended to bequeath to Florius was 300,000 sestestii, but that by some clerical error the sum named in the will was only 30,000, and that Cluentius, at first, refused to admit that the legatee had a good claim to the larger sum.

LIX. § 162. *Caelii cuiusdam*, &c.] This charge against Cluentius amounted to what, by lawyers, was termed *Plagium*, which is thus defined by Ulpian (Digest. XLVIII. xv. 1)—

Si liberum hominem emptor sciens emerit, Capitale Crimen adversus eum ex Lege Fabia de Plagio nascitur: quo venditor quoque fit obnoxius, si sciens liberum esse vendiderit.

The word *Plagium* does not occur except in the legal writers of the Empire, unless we are to conclude from the passage above quoted, that *Lex Fabia de Plagio* was the original title of the law in question. We know not when or by whom this *Lex Fabia* was passed, but it was in force in the time of Cicero, and we gather from his words (Pro C. Rabirio III. § 8), compared with Ulpian (Coll. XIV. 3), that it contained a chapter against those who bought, sold, or retained in their possession a slave belonging to another person.

A. B. and some other MSS. read the name *Ceius*, and so Class. and Bait.

LIX. § 162. *Mulierem quum emisset de sectoribus.*] A. B., Class. and Bait. have *a sectoribus*. The word *sector* originally signified simply a cutter, one who cuts; and thus in Plautus we find *sector zonarius* denoting a cut-purse. But after the civil wars of Marius and Sulla, a class of persons arose who made it their business to purchase confiscated property in the lump, and to realise a profit by dividing it, cutting it up as it were, into small portions, and disposing of it by retail. These persons were styled *sectores*, the sale itself being *sectio*. The occupation was regarded as invidious and disreputable, and *sectores* are generally spoken of with dislike and scorn. See Pseud. Ascon. on Cic. In Verr. Act. II. i. 52—61.

In progress of time *sector* became the technical word used to denote the purchasers of the property of an individual when that property was sold on behalf of the state, and a sale of this description was *sectio*. Thus, when the favourites of Nero were called upon to refund the sums which they had received, it became necessary to sell their property to satisfy the demands of the public—*ubique hasta, et sector, et inquieta urbs auctionibus* says Tacitus (H. I. 20); and the same historian, when speaking of the residue of the proceeds derived from the property of Nero himself, which had been sold after the tyrant's death for public behoof, uses the expression—*reliquias Neroniarum sectionum* (H. I. 90).

So also in Roman Law we find an *Interdictum Sectorium*, with regard to which we have the words of Gaius (Instit. IV. § 146)—*Item ei, qui publica bona emerit, eiusdem condicionis interdictum proponitur, quod appellatur* SECTORIUM, *quod* SECTORES *vocantur, qui publice bona mercantur.* Paulus Diaconus (p. 337, ed. Müller) explains *Sectio* as *Persecutio iuris* and of *Sectores* he says, *et qui secant dicuntur et qui empta sua persecuntur.*

LIX. § 163. ..... *calumniator.*] One who makes a trade of bringing false charges. In the next clause *non effugiet calumniam* means—he will not escape when prosecuted in a civil suit, for bringing false and vexatious accusations. On the meaning of *calumnior* as regards advocates, see above, note on XXXII. § 87.

LIX. § 163. ..... *cum servo Habiti.*] A. B., Class. and Bait. have *servis*. We have another example of the construction *furti agere* in Cic. Epp. ad Fam. VII. 22—

Illuseras heri inter scyphos, quod dixeram controversiam esse, posset—ne heres, quod furtum antea factum esset, *furti recte agere*. See also Quintilian I. O. VII. 1.

LIX. § 163. ..... *vobis iisdem fortasse patronis.*] So A. B. and many other MSS., while several have *nobis*, which is adopted by Orelli, but it is difficult to perceive upon what grounds. The note of Classen places the matter in the true point of view—

Attium appellat et socios eius, quos eosdem mox iterum alloquitur (subornatis): omnino enim Ennii patroni non Cluentii memorandi erant: nam quomodo quis adversarii patronis crimen effugere dici potest? quod in vulgata scriptura *nobis iisdem patronis* aperte inesset. Accedit quod Attium acerbe pungat, eum furis cuiusque causam suscepturum esse dicens.

LIX. § 163. ..... *hominem multorum hospitum.*] A. B., Class. and Bait. have *hospitem*, all other MSS. and edd., *hospitum*.

LIX. § 163. ..... *A. Binnium.*] Here, as usual, there is the greatest confusion as to the name, and we have the choice of *Ambivium, A. Bivium, A. Brivium*, &c.

LIX. § 163. *Si invitaverit*, &c.] Cicero here plays on the ordinary meaning of the words *invitare—accipere—decedere de via*, and their technical force when used with reference to the calling of an innkeeper. Such persons were wont to stand at the doors of their houses and to solicit travellers to enter (*invitare*); if a traveller consented he was said *decedere de via*, or *devertere*, and hence *deversorium* is the common word for an inn. The meaning will be something to the following effect—It is not requisite that I should say anything with regard to this man for the present. But if the fellow give me a pressing invitation, which is part of his trade, I shall turn the tables on him, and entertain him with such right good will that he will be very sorry that he ever turned aside from his path to come to close quarters with me.

LX. Cicero now enters upon that portion of the case which referred to the charges of poisoning preferred against Cluentius—the only portion, according to the representations of the orator, over which the court had, in the present instance, any jurisdiction.

LX. § 165. ..... *C. Vibium Capacem.*] The name is uncertain. A. B. have *Cappadocem*, upon which Classen remarks—Hanc praestantissimorum MSS. scripturam eo minus repudiare visum est, quod aperte peregrinus erat Vibius iste qui Romae apud hospitem habitabat.

This appears to me to be one instance of many where Classen is blinded by the determination to support his two favourite MSS. For,

1. The word *hospes* was no longer restricted to its ancient and proper signification, as we may see from various passages in this very speech. Any stranger from an Italian town, although himself a Roman citizen, would, if he were paying a visit to a friend at Rome, be said *habitare apud hospitem*.

2. If the person named was really *C. Vibius Cappadox*, we should at once infer that he was the Asiatic freedman of some Roman C. Vibius—but such a person was little likely to have been the *hospes* and *familiaris* of a senator.

3. But we can almost demonstrate that he was no foreigner, for it appears from the conclusion of the chapter that he was the uncle (*avunculus*) of Numerius Cluentius, a Roman knight.

LX. § 165. *At heres est Cluentius.*] A. B. and several other MSS. omit these words; those MSS. which exhibit them have either *aut heres* or *haud heres, at* is a conjectural emendation. Classen, who is followed by Baiter, brackets the clause, and argues strongly that it is an interpolation; but it is difficult to see why Cicero should have alluded at all to the disposition of this person's property, unless some charge had been preferred against his client in connection with the succession. It would appear that the whole charge had been trumped up in consequence of the property of Capax having been inherited by a Cluentius whom the prosecutors, by mistake, supposed to be A. Cluentius Habitus.

LX. § 165. ..... *praetoris edicto.*] Class. and Bait. have *ex edicto Praetoris*, which, according to the latter, is the reading of A. B. *Ex edicto* is certainly the strict technical phrase.

LX. § 166. ..... *more Larinatium.*] Here we have at Larinum, nearly two thousand years ago, the fashionable wedding dejeuner of our times.

LX. § 166. ..... *quum daretur.*] Observe the force of the tense—when it was in the act of being administered.

LX. § 167. ..... *possent? quod.*] A. B. have *possint? id quod*, and so Class. and Bait.

LX. § 167. ..... *An ut de causa*, &c.] i. e. Did he desire, without lessening the danger of his actual position, to lay himself open to a new charge?

LX. § 167. ..... *in illa frequentia?*] A. B. omit *in*, and so Class. and Bait.

LX. § 167. ..... *cur non de integro autem datum?*] So, apparently, all MSS. Baiter brackets *autem*.

LX. § 167. ..... *ut videar non dicendo.*] Cicero means—I will not say another word, least I should run the risk of appearing to wish to dilate upon this topic while I profess to refrain from speaking upon it.

LX. § 167. ..... *defendet.*] This ought to have been printed *defendit*, which is the reading of A. B., D. and most MSS. Some have *defendat; defendet* is a conjectural emendation of C. Stephens, adopted by Lambinus, but uncalled for.

LX. § 168. ..... *crudior.*] i. e. with a disordered stomach. The modifications of meaning which the word *crudus* undergoes are remarkable. *Crudus* is properly the epithet applied to raw undressed food, in opposition to *coctus*, as in Plaut. Aul. III. ii. 15—

Quid tu curas utrum crudum an coctum edim?

It is then used to denote food which remains uncooked, i. e. undigested, on the stomach, as in Iuvenal, S. I. 143—

Poena tamen praesens, quum tu deponis amictus
Turgidus, et crudum pavonem in balnea portas—

and finally, it is applied to the organs whose digestive powers are impaired, as *cruda alvus* in Cato, or to a person suffering from derangement

of the digestive functions, as in the text. Moreover, the word is applied figuratively in a great variety of senses, all of which can be readily deduced from the above. The idea of some grammarians that it is etymologically connected with *cruor*, seems fanciful.

LX. § 168. ..... *sibi tamen.*] Most, if not all MSS. have *sibi tum*, and so Class. and Bait. *Tamen* is certainly more emphatic, and must be referred to *crudior*—disordered as he was, *yet*, as young men will do, he placed no restraint upon himself.

LX. § 168. ..... *ex illo loco.*] i. e. the *subsellia accusatorum*. See above, note on XXIV. § 65.

LX. § 168. ..... *perfer.*] Most edd. have *et perfer*, but the great majority of MSS. omit *et*.

LXI. § 169. *Inimicitas enim inter ipsos.*] A. B. omit *inter ipsos*. The words are retained by Class. and bracketed by Baiter.

LXI. § 169. ..... *aut quod metuunt, aut quod oderunt.*] So all the MSS. except a few which have the corruption *ut*. Lambinus introduced *vel ... vel*, which is certainly more appropriate, but it is unsafe, in such circumstances, to depart from the MSS. where they are unanimous.

A. B., Lambinus, Class. and Bait. have *eos metuunt*, but *eos* is omitted in all other MSS.

LXI. § 170. ..... *inimicum.*] So A. B. The great majority of MSS. omit *inimicum*.

LXI. § 170. ..... *nemo adire ... respicere.*] Here we depart from the MSS., which all agree in *audire*. The correction, which was made at an early period, may be regarded as certain The climax evident in *recipere—adire—alloqui—respicere*, would be destroyed by the substitution of *audire*. See note on XIV. § 41, where we have a similar display of rhetoric, but pushed much farther.

Instead of *respicere*, A. B. have *adspicere*, which is adopted by Classen, who says—*Respicere* quamquam in longe plerisque MSS. legitur, plane huius loci non est—but in this, it appears to me, he is quite mistaken. *Adspicere* may undoubtedly signify to look at an object designedly and with a purpose, but it is also frequently employed in such phrases as *adspicere aliquem, adspicere lucem*, simply in the sense to see, without implying any exercise of the will, while, on the other hand, *respicere aliquem* necessarily implies a deliberate act. This distinction is illustrated by the following clause from Cic. De Divin. I. 33, where he is telling a story about Dionysius—Quum autem aliquantulum progressus esset, subito exaudivit hinnitum, *respexitque* et equum alacrem *adspexit*—here the *respexit* expresses the voluntary act, *adspexit* the result which was involuntary. Hence, in the present passage, where we have a choice between *respicere* and *adspicere*, and where the weight of testimony is greatly in favour of the former, we cannot hesitate to prefer it.

LXI. § 170. ..... *exsulis testimonio.*] An *Exsul* was *ipso facto* incapable of giving evidence—he was civilly dead.

LXI. § 171. ..... *acerbe et penitus.*] i. e. bitterly and from the bottom of his heart.

LXI. § 171. ..... *quod illi.*] Observe that the antecedent to *quod* is *mortem*, the relative being *attracted*, as grammarians term it, into the gender of *perfugium*. For a different kind of *attraction*, see above XLII. § 117.

LXI. § 171. ..... *animi et virtutis.*] Here *animus* is equivalent to spirit.

LXI. § 171. ..... *ineptiis ac fabulis.*] So all MSS. except A. B., which have *ineptis fabulis*, and so Class. and Bait.

LXI. § 171. ..... *Poenis.*] The Furies—the avengers of guilt (see Varr. ap. Non. c. 4. n. 418). Valerius Flaccus (I. 796) calls *Poena* the mother of the Furies. Cicero (In Pison. XXXVII. § 91) apostrophises Piso as—O Poena, O Furia sociorum. Observe, however, the difference of construction in the two passages, here *Poenae uxorum—fratris—liberum* are the Furies who avenge the wrongs done by Oppianicus to his wives, his brother, and his children; but *Poena sociorum* is, the tormentor of our allies.

Liberum is a not very common syncope for *liberorum*.

LXI. § 171. *Quae si falsa sunt, id quod omnes intelligunt.*] Cicero, as a rhetorician, finds it convenient elsewhere to take a different view of the popular belief with regard to a future state—thus, in his last oration (Philipp. XIV. 12) when speaking of those who had fallen at the battle of Modena—

Illi igitur impii (the soldiers of Antony) quos cecidistis, etiam ad inferos poenas parricidii luent; vos vero (the soldiers of the Consuls) qui extremum spiritum in victoria effudistis, piorum estis sedem et locum consecuti.

LXII. § 172. *Cur deinde tu.*] So all MSS. and edd. except A. B., Class. and Bait., who have *Cur igitur tu.*

LXII. § 173. ..... *latius potuit.*] So all the MSS., but Orelli, following Lambinus and several of the early edd., substitutes *latentius* which is at once unnecessary and inappropriate. The meaning of *latius* is clear. Could the poison spread its influence more widely if hidden in some one morsel of bread, in which case it might not have been swallowed at all by the intended victim, than if the whole had been dissolved and diffused in a draught of wine, presented to him. The sequence is, *facilius*, more easily administered; *latius*, more widely diffused in the vehicle in which it was administered—*celerius*, more speedy in its effect. Moreover, *facilius fallere* would be a mere repetition if *latentius* were the true reading.

LXII. § 173. ..... *si esset animadversum.*] Strictly, *animadversum* must agree with *venenum*, but the meaning is—if the attempt to administer poison had been discovered, was the poison itself more likely to escape notice if concealed in a piece of bread, in which case it would have preserved its own form distinct, and could have been separated from the vehicle, than if mixed with wine, in which case it would have been so combined with the vehicle that it would have been impossible to separate it.

LXII. § 174. ..... *propter multorum eiusmodi mortem, satis firmam... non haberet.*] A. B. have *propter multorum eiusmodi casum, minime firmam veneni suspicionem haberet*, a reading which is, perhaps, as good as the vulgate, but I am unable to see that it possesses the great superiority so much vaunted by Classen over the received text. If there is some awkwardness in the phrase—*propter multorum eiusmodi mortem*—which must mean, in consequence of a death of that kind (i. e. sudden death) falling upon many persons (i. e. being a common occurrence), the difficulty is in no way diminished by the substitution of *casum* for *mortem*. Whichever of these two is the true reading, the other was probably placed as a marginal gloss by some transcriber.

Some MSS. omit *non* and hence the substitution of *minime* for *satis... non*.

Baiter follows A. B. and Classen.

LXII. § 175. ..... *Sex. Attio.*] The MSS., as usual in such cases, vary as to this name.

LXII. § 175. ..... *vir dissolutissimus.*] A *vir dissolutus* is properly one who has shaken himself loose from all the ties of social morality. Cicero frequently uses the phrase.

LXII. § 175. ..... *incolumi fortuna.*] i. e. while enjoying prosperity, suffering under no misfortune. The *fortuna* of Oppianicus, after his *damnatio*, was no longer *incolumis* but *fracta*. See note on IV. § 10.

LXII. § 175. ..... *ad urbem ... extra portam.*] It would appear from this that Oppianicus, although *damnatus et exsul*, was at liberty to live in the vicinity of Rome, although he could not enter the city.

LXIII. § 176. *Post mortem eius Sassia.*] So all MSS. and edd., but Baiter, following Beck, brackets the word *Sassia*.

LXIII. § 176. ..... *in emendo Diogene.*] See XVI. § 47. Sassia bought Strato from Rupilius, who was a stranger, but she demanded the slave of her son for the torture (*in quaestionem postulavit*).

LXIII. § 176. ..... *de Ascla quodam.*] The best MSS. have *Ascla* or *Asela*, and there can be little doubt that some proper name lurks here. Many MSS. and almost all edd. have *de assecla*, which, although specious at first sight, is in reality not intelligible.

LXIII. § 176. ..... *vehementissimis.*] So all MSS. and edd. except A. B., Class. and Bait., who have *vehementissime*.

LXIII. § 176. ..... *auctoritate advocatorum et vi tormentorum adducti.*] There are no important variations in the MSS., but the difficulty of the passage is obvious. Classen endeavours to remove this by supposing that Cicero is speaking ironically. Nihil in his novandum est: sed cum ironia ista proferuntur: nam si quid miseros illos ad confitenda etiam quae non commisissent permovere potuisset, adduxisset certe *auctoritas advocatorum et vis tormentorum:* quum tamen nihil fassi sint, cum acerbo risu illud constantiae causam fuisse dicit orator, quod minime esse potuit, et veram causam, quam sponte quisquam intellecturus erat, reticet, innocentiae conscientiam. This explanation appears to me altogether unsatisfactory.

Any one who reflects upon the tone and spirit of the narrative, will perceive that irony would here be destitute of point and force, and would, moreover, be in very bad taste. The orator states that the slaves in refusing to criminate Cluentius, were influenced by two forces—1. The *auctoritas advocatorum.*—2. The *vis tormentorum.*

Now, in the first place, there can be no sneer implied against the *advocati*, for we are told above, apparently in all sincerity, that they were *homines honesti et omnibus rebus ornati*, and their conduct, as described below, proves that they were men of sense and humanity. Hence the *auctoritas advocatorum* would really have acted as an inducement and encouragement to the tortured slaves to adhere to the truth, and the only difficulty is to perceive how the *vis tormentorum* could have acted in the same manner. But Cicero, it will be observed, states, emphatically, that the most excruciating tortures were unsparingly applied, hence we may, without violence, conceive that the slaves, enraged by the relentless cruelty of Sassia, doggedly determined, with a sort of feeling of revenge, not to give that evidence which they knew that she was so eager to obtain, and their resolution was supported by the presence of the respectable men who had been called in to listen to their anticipated falsehoods.

Since writing the above, I perceive that Ernesti gives substantially the same explanation.

LXIII. § 177. ..... *aversari.*] A., most MSS. and the earlier edd. have *adversarii*, which is clearly corrupt: Classen and Baiter, following B., have *adversari:* Manutius introduced *aversari*, probably on MS. authority, and this reading was adopted by Lambinus and almost all subsequent editors. Something more than mere opposition (*adversari*) seems to be required here, and the loathing implied in *aversari* is quite appropriate.

LXIII. § 178. ..... *verum crimen*, &c.] Observe the antitheses,

Verum crimen—Ficta suspicio.
Aperta inimicorum oppugnatio—Occultae matris insidiae.

LXIII. § 178. ..... *instructam ... et ornatam.*] *Instructam*, a shop arranged and fitted up for the practice of medicine: *ornatam*, stocked with drugs and instruments.

LXIV. § 178. ..... *velle et optare ... struere et moliri.*] *Velle* indicates a passive condition of mind, *optare* the active formation of a wish. Sassia would not only have been well pleased if misfortune had befallen her son, but she longed that some calamity might overtake him.

Struere is to make arrangements and preparations for carrying out an object, *moliri* to make a strong effort to accomplish a purpose at once. See below, LXVI. § 188—*voluerit; optaverit; cogitaverit; effecerit.*

LXIV. § 179. ..... *Hortensio, Q. Metello consulibus.*] The praenomen Q. is found in every MS., but is omitted by most edd. before Classen, for the sake of symmetry apparently, because it is not attached to the name of Hortensius also. But it is evidently inserted here to prevent confusion, for Q. Metellus was consul along with Hortensius in B. C. 69, and L. Metellus was consul the year following along with Marcius Rex.

LXIV § 179. ..... *despondit ei filiam suam.*] Donatus on Terence (Andr. I. i. 75) says that *Spondere* is properly used with reference to the father of the bride, *Despondere* to the father of the bridegroom, a distinction certainly not universally, or even generally observed. Here *despondere* is used with reference to the mother of the bride, and in a letter from Coelius to Cicero we find a still wider departure from the grammatical canon—*Cornificius adolescens Orestillae filiam sibi despondit* —(Epp. ad Fam. VIII. 7).

LXIV. § 179. ..... *nummorum ... auri.*] The former is coined money, the latter bullion. This is evident from the next sentence.

LXIV. § 179. ..... *IIS°°*] The number has fallen out of the MSS., and we have no means of restoring it.

LXIV. § 180. ..... *dentatam.*] The MSS. have *dentium* or *dentum.* The true reading is preserved in Priscian. III. vii. 42. We find the word again in Pliny (H. N. XXXVI. 22)—

In Liguria quoque, Umbria et Venetia, albus lapis dentata serra secatur.

LXIV. § 180. ..... *a coactoribus.*] *Coactor* corresponds, in most cases, to the English word *collector*. The *coactores* here spoken of were the persons employed to collect the money due for goods purchased at auctions. This was the profession followed by the father of Horace—S. I. vi. 86—

Si praeco parvas, aut, ut fuit ipse, coactor
Mercedes sequerer .....

LXIV. § 181. ..... *cui probatis?*] i. e. Whom do you persuade to believe this.—To whose satisfaction do you establish this? See above, III. § 8.

LXIV. § 181. *Atque etiam.*] These words mark an aposiopesis—Was an investigation instituted with regard to the death of Oppianicus three years after the event? *Yes*, and *not only did she do this, but she* even went so far, &c.

LXV. § 182. ..... *habuisset ... conata est.*] Classen and Baiter, following A. B., and one other MSS. read *habuisses ... conata es*, thus converting the sentence into a direct appeal to Sassia, and arranging the punctuation as follows—

Itane tandem, mulier, iam non morbo sed scelere furiosa? quum quaestionem habuisses ... conata es.

LXV. § 182. ..... *non dicam viro, ne colonum*, &c.] If Cicero had said that *no man* was present, his opponent might have contradicted him and said that the *colonus* (LXII. § 175) was present. Cicero, therefore, believing that this person actually was present, corrects himself by anticipation, as it were, but guards against the supposition that he could be called a respectable (*bono*) man. The reading, *abfuisse*, adopted by some of the earlier editors, destroys the sense of the passage.

LXV. § 183. *An hoc dicitis: ... mementote.*] So A. B. Orelli has *An hoc dicitis: mihi enim venit in mentem, quid dici possit, tametsi adhuc non esset dictum*, omitting *mementote*, which, however, is found in every MS. All MSS. except A. B. have *adhuc* instead of *ab hoc;* the greater number have *posset* and *esset.* Different editors have moulded the text into different forms to suit their fancy. The explanation given by Classen of the text we have adopted, is satisfactory.

Cicero quum id, quod solum ab accusatoribus excusandi gratia dici potuit, ipse proferat, iudices admonet, id ipsum tamen ab Attio non esse

dictum *tametsi ab hoc non esse dictum, mementote.* Laetatur igitur, ab improbis solam excusandi rationem, qua innocentem opprimere potuissent, non esse inventam.

LXV. § 183. ..... *quorum eminet audacia atque proiecta est.*] i. e. is conspicuous and thrown forward into full relief. So In Verr. Act. II. i. 2—

Est idem Verres qui fuit semper: ut ad audendum proiectus, sic paratus ad audiendum—i. e. forward. The word, in its literal sense, occurs, De Orat. III. § 128—*Brachium procerius proiectum.*

LXV. § 183. ..... *nihil clarius Larini fuit.*] A. B. omit *fuit.* It is retained by Classen and bracketed by Baiter.

LXV. § 183. *An, id quod dicendum,* &c.] Classen exhibits this sentence as follows: —*An, id quod vobis dicendum est, et quod tum Sassia dictitavit: quum de furto quaereret, tum Stratonem iisdem in tormentis dixisse de veneno?* Nearly all MSS. have *dictitavit.* B. has *quaereret.* A. B. have *Stratonem ... dixisse.* Although the form of the proposition is different, the general sense and force of the passage remain unchanged.

LXV. § 184. ..... *tabellae quaestionis.*] i. e. minutes of the evidence given under torture, noted down and attested (*obsignatas*) at the time (*tum*) by the signature of the *advocati.*

LXV. § 184. ..... *primum.*] So A. B. *Primum* corresponds with *post* in the next clause: *primam,* which is the reading of most MSS. and edd., is quite out of place.

LXV. § 184. ..... *iudicarat.*] So A. B. and the great majority of MSS. A few MSS. and all edd. before Classen have *indicarat.*

LXVI § 185. ..... *quis obsignarit.*] So nearly all MSS. Most edd. have *quis obsignavit?*

LXVI. § 185. *Neminem reperietis,* &c.] The meaning is—You will be unable to find any one to bear witness to the authenticity of these depositions, except it be a person of such infamous character that I should be glad to see him produced, because the testimony of such a man would injure your cause. Cicero, very probably, intends to indicate the paramour of Sassia.

LXVI. § 186. ..... *afferes.*] So most edd., but the great majority of MSS. have *afferas,* which may be admitted without scruple, for, as Classen remarks—inest admiratio quaedam in coniunctivo.

LXVI. § 186. *Esto.*] i. e. Enough of this—let us pass on. The conjectures of those critics who have proposed to substitute *nonnihil* or *aliquid* for *nihil* in the following clause, are undeserving of attention. They seem to have supposed that *esto* here signifies, as it certainly often does, granted that.

LXVI. § 187. *Nam Stratonem quidem.*] *Nam* indicates an aposiopesis —*I ask this question with regard to Nicostratus,* FOR the fate of Strato is notorious.

LXVI. § 188. ..... *voluerit, optaverit,* &c.] Here we have a climax—

Velle, to be willing, expressing little more than the absence of disinclination.

Optare, to be actively and earnestly desirous.

Cogitare, to combine one's thoughts for the attainment of an object.

Efficere, to carry out a purpose.

See above, note on LXIV. § 178.

LXVI. § 188. ..... *obsides filios ... mortuos.*] See IX. § 27.

LXVI. § 188. ..... *tum denique in,* &c.] Observe the expression—nupsit *in* familiae luctum atque *in* privignorum funus—where *in* may be rendered by *to* in the sense of—so as to produce as an immediate result.

LXVI. § 188. ..... *Aurium.*] Most edd. have *Aurium Melinum,* but every MS. except one omits *Melinum.* A. has *M. Maurium,* B. has *A. Aurium.*

LXVI. § 188. ..... *cognosceret.*] A. B. and some other MSS. have *cognosset,* and so Class. and Bait. The tense is a matter of indifference, although *cognosceret* is perhaps more forcible, indicating, as it does, that the resolution taken by Sassia was immediate—that there was no moment of hesitation on her part.

LXVI. § 188. ..... *coniugii.*] The great majority of MSS. omit this word. It is bracketed by Classen and left out by Baiter.

LXVI. § 189. ..... *quod nisi esset.*] A. B. have *quod si esset,* and so Class. and Bait.

LXVI. § 189. ..... *scelere omni.*] A. B. have *scelerum omnium,* and so Class.

LXVI. § 190. ..... *donis, muneribus.*] See note on XXIV. § 65. Classen remarks that these two words are frequently joined, thus Pro Archia. VIII. § 18—Quare suo iure noster ille Ennius sanctos appellat poetas, quod quasi Deorum aliquo dono atque munere commendati nobis esse videantur.

Some MSS. and several of the earlier edd. have *donis muliebribus,* which, in itself, is unexceptionable, for the *collocatio filiae* and the *spes hereditatis* might be aptly termed *dona muliebria.*

LXVII. § 190. *Ita quod,* &c.] This is found in the great majority of MSS., and is more appropriate than *Itaque,* which appears in most edd. We have *ita quod* in the same sense at the end of Chapter IX.

LXVII. § 191. ..... *falsae conscriptiones quaestionum.*] i. e. The forged depositions pretended to have been taken at the investigation into the death of Oppianicus.

LXVII. § 192. ..... *Romam misisset: ipsa paullisper.*] So. A. B. In most MSS. and edd. the words are arranged differently.

LXVII. § 192. ..... *postea autem, quum.*] So all MSS. and edd. except A. B., Class. and Bait., who have *postea autem quam.*

LXVIII. § 192. *Iam vero quod iter Romam*, &c.] The route followed by Sassia in her journey from Larinum to Rome, will be readily understood by referring to any good map. On leaving Larinum, she would soon join the cross road mentioned in the Antonine Itinerary as leading from Teanum Apulum, through Geronium, to Bovianum, one of the most important towns in Samnium, a distance of 48 miles. From Bovianum she would follow a branch of the Via Valeria northwards to Æsernia, a distance of 18 miles, from which there must have been some road or track, down the valley of the head waters of the Volturnus, to Venafrum on the Via Latina, whence she would proceed through Aquinum, Fabrateria, Fregellae, and Anagnia to Rome.

LXVIII. § 192. ..... *Fabraternorum.*] The best MSS. have *Afraternorum*, one or two have *Fraternorum*. Out of these some edd. make *Venafranorum*, others *Fabraternorum*, of which the latter is to be preferred as approaching more nearly to the corrupt forms in the MSS. As far as the geography is concerned, *Venafrum* and *Fabrateria* are alike unexceptionable, but *Alfaternorum*, which Graevius suggests, would lead us away to Nuceria Alfaterna (*Nocera dei Pagani*) on the Sarnus, near Pompeii.

LXIX. § 195. ..... *quosdam alios deos.*] A peculiar body of deities, different from the Gods whom men in general worship.

LXIX. § 195. ..... *communi Italiae pace, in domesticis copiis esse totum.*] Orelli and many other edd., in opposition to all MS. authority, read here—*in communi Italiae pace, domesticis copiis esse tutum.* Cicero must mean by *domesticae copiae* the women and children (*mulieres et pueri*) of the population, and a town abandoned to their protection exclusively, might appropriately be said—*in domesticis copiis esse totum.*

LXIX. § 195. *Quos tamen ipsos.*] i. e. The women and children.

LXIX. § 197. ..... *lacrymis ... lacrymantes.*] We can scarcely help thinking that Cicero here goes too far in his attempt to enlist the sympathies of his audience. Making every allowance for the excitable temperament of the inhabitants of southern Europe, as opposed to the phlegmatic coldness of the north, the picture of the mayor and aldermen of a provincial town dissolving into tears on such an occasion, must surely have appeared ludicrous even in a Roman court of justice.

LXIX. § 197. ..... *laudationem decretam.*] So A. B. All other MSS. and edd. have *laudationum decreta.*

LXIX. § 198. ..... *res pecuniarias.*] This is the reading of all MSS. Orelli and several edd. have substituted *pecuarias*, a change quite uncalled for. It cannot be said that *negotia* implies the one more than the other.

LXX. § 198. *Quam non abesse ... Quam vellem praesentem posse.*] The MSS. are here hopelessly corrupt. All, without exception, have *Quando abesse*, and omit *Quam vellem*, while the great majority have *possem*. *Quam non* is a conjectural emendation of some early editor. *Quam vellem* was introduced by Lambinus.

LXX. § 198. ..... *de capite huius, quam de sua vita.*] Observe that *caput* and *vita* are here placed almost in opposition to each other—*caput*,

in its technical sense, denoting not the mere physical life of an individual, but the whole sum of his political and social rights on which depended his *status* as a member of the community to which he belonged. The *vita* of Rufus was in danger, but not his *caput*. Cluentius ran the risk of *deminutio capitis*, but his life was not threatened.

LXX. § 198. ..... *in testimonio.*] A. B. omit *in*, and so Class. Many MSS. have *et testimonio*, and many *et testimonium*. Graevius, who is followed by Baiter, has *ex testimonio.*

LXX. § 198. ..... *verecundia.*] Here *verecundia* is equivalent to reserve.

LXX. § 199. ..... *studium, curam, diligentiam ... laborem.*] *Studium*, zeal in the prosecution of an object, properly *a sentiment* only; *cura*, earnest attention which allows nothing presented before it to be overlooked; *diligentia*, activity in instituting inquiries for ascertaining truth; *labor*, the actual toil by which an effect is produced. The *studium*, *cura*, and *diligentia* belonged to the friends of Cluentius, the *labor* to Cicero himself.

LXX. § 199. ..... *ut eam nemo hominem.*] Here, and in the next sentence, *homo* is used to denote a human being, without reference to sex. So in the celebrated letter of condolence addressed by Sulpicius to Cicero on the death of Tullia (Epp. ad Fam. IV. 5)—

Quae si hoc tempore non diem suum obisset, paucis post annis tamen ei moriendum fuit: *quoniam homo nata fuerat.* In Greek ἄνθρωπος is used in a similar sense, as in the Hippolytus of Euripides, where the nurse thus addresses Phaedra (472)—

Ἀλλ' εἰ τὰ πλείω χρηστὰ τῶν κακῶν ἔχοις
Ἄνθρωπος οὖσα, κάρτα γ' εὖ πράξειας ἄν.

LXX. § 199. ..... *reservarit.*] A. B. and some other MSS. have *reservaret*, and so Class.

LXX. § 200. ..... *pudorem, bonitatem*] A. B. and another MS. have *pudorem, veritatem*, and so Class. and Bait.

LXXI. § 201. ..... *iudices..*] A. B. and several other MSS. omit *iudices*, and so Class.

LXXI. § 201. ..... *conservata.*] So every MS. with one exception. Most edd., however, have *reservata*, which is less appropriate.

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